

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

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

**AMENDED APPLICATION OF MEWBOURNE OIL COMPANY  
FOR COMPULSORY POOLING AND APPROVAL OF AN  
OVERLAPPING HORIZONTAL WELL SPACING UNIT,  
EDDY COUNTY, NEW MEXICO**

**Case No. 22093**

**APPLICATION OF ASCENT ENERGY, LLC  
FOR A HORIZONTAL SPACING UNIT AND  
COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**Case No. 22112**

**APPLICATION OF ALPHA ENERGY  
PARTNERS, LLC FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO**

**Case No. 22171**

**ASCENT ENERGY, LLC'S REPLY TO ALPHA ENERGY PARTNERS, LCC'S  
RESPONSE TO MOTION TO CONSOLIDATE**

Ascent Energy, LLC (“Ascent”) submits its Reply to the Response filed by Alpha Energy Partners, LLC (“Alpha”) to Ascent’s Motion to Consolidate Case Nos. 22093, 22112, and 22171 for Hearing (“Response”). The purpose of this Reply is to rebut Alpha’s assertion that Ascent<sup>1</sup> violated Rule 16-301 NMRA (2021) by making “inaccurate, irrelevant, and prejudicial allegations” regarding Alpha. See Response at ¶ 4. In support whereof, Ascent states the following:

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<sup>1</sup> Although the convention of these pleadings refers to Ascent and Alpha as the actors, in actuality Alpha’s counsel is impugning the integrity of counsel for Ascent with an alleged violation of Rule 16-301 (2021), which applies to attorneys and not to parties. Thus, the propriety of Alpha raising this issue in pleadings filed at the Division is questionable.

## I. Facts and Procedural Background:

1. Ascent filed its Motion to Consolidate on October 13, 2021. In that Motion, Ascent properly requested that Alpha's application for a compulsory pooling order for the N/2 of Sections 19 and 20 be consolidated with Case Nos. 22093 and 22112 since each of these three applications overlap with one of the other applications. Thus, the Division should weigh the comparative merits of each application in one proceeding in order to fulfill its duty to determine which development plan is best for conservation and the prevention of waste in the Subject Lands.<sup>2</sup>

2. In its Response, Alpha agrees with Ascent's request that the above-referenced cases should be consolidated. *See* Alpha's Response, p. 2, ¶¶ 3 and 5 (Alpha supporting and requesting consolidation of the cases and stating its intention to consolidate additional cases involving the Subject Lands).

3. After agreeing with Ascent's request to consolidate the cases, Alpha asserts that the allegations in ¶¶ 12-19 of Ascent's Motion are "inaccurate, irrelevant, and prejudicial," and that any allegations regarding Alpha's operating experience are misleading and have no bearing on the request to consolidate the hearings, amounting to a violation of Rule 16-301. However, Ascent did nothing more than cite to facts as they appear in the Division's public online databases and on Alpha's webpage that are readily accessible and fall within the scope of judicial notice as informative to the tribunal. Based on those facts, Ascent made the unremarkable statement that the issue of Alpha's ability to drill and complete its proposed wells in the Subject

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<sup>2</sup> The Subject Lands herein consist of Sections 19, 20, 21 and 22, all in Township 22 South, Range 27 East, Eddy County, New Mexico, where Alpha has proposed the development of Sections 19 and 20, Ascent has proposed the development of Sections 20 and 21, and Mewbourne Oil Company has proposed the development of Section 21 and 22.

Lands is an issue that should be decided by the Division in the consolidated proceeding. *See* Ascent's Motion, p. 5, ¶ 19.

**II. Ascent's request to consolidate Case Nos. 22112, 22093, and 22171, is warranted; and Ascent's Motion properly serves that procedural purpose.**

4. Rule 16-301 provides, in pertinent part, that:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

5. Alpha's suggestion that Ascent's attorneys violated Rule 16-301 appears to be two-fold. First, Alpha makes the blanket assertion that the allegations in Paragraphs 12-19 of the Motion to Consolidate are inaccurate. Second, Alpha contends that these allegations are irrelevant and prejudicial, and that Ascent's attorneys violated Rule 16-301 by including these facts in the Motion to Consolidate. Neither of these arguments have merit.

6. First, Alpha does not provide any evidence or basis to establish that any of the facts cited in the Motion to Consolidate are inaccurate. It is undisputed that (1) the Wolfcamp formation in the lands that parties seek to develop are close to a problematic brine well in an area subject to subsidence; (2) Ascent and Mewbourne Oil Company ("Mewbourne") have established records of drilling and completing horizontal wells in New Mexico while Alpha does not have any such record; (3) Alpha represents itself as a private company that acquires assets in the Permian Basin, but does not hold itself out to be an operator; (4) Alpha has never filed an APD and only recently acquired an OGRID Number; and (5) that Alpha has only filed three pooling application in New Mexico, including the subject application, all of which were recently filed.

7. Note [2] from the committee commentary on Rule 16-301 states that “the filing of an action or defense or similar action taken for a client is not frivolous because the facts have not been first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery.” Ascent’s recitation of the facts was a preliminary presentation of what is currently and publicly available, and it was provided in good faith to inform the tribunal and parties of such facts as Ascent pursues its interests in the cases.

8. Second, Alpha asserts that Ascent’s attorneys violated Rule 16-301 by including irrelevant and prejudicial facts in the Motion to Consolidate. Alpha’s reliance on Rule 16-301 is misplaced for two reasons.

9. Let us assume, *arguendo*, that the facts set forth in Paragraphs 12-19 are irrelevant to the Motion to Consolidate and are prejudicial to Alpha in that context, and they do bring the assertion of such facts in the Motion to Consolidate within the purview of Rule 16-301. To violate Rule 16-301, an attorney must advocate an issue for which there is no basis in law and fact. The issue of Alpha’s ability to be a prudent operator is a fundamental consideration in determining whether the Division should grant its application. The facts cited in Paragraphs 12-19 support an argument that Alpha lacks the operational experience to be a prudent operator. Thus, there is no violation of Rule 16-301. The proper procedural mechanism to assert that these facts are irrelevant and prejudicial to Alpha would have been a request to strike them from the Motion.

10. Alpha’s apparent lack of operational experience is relevant to Ascent’s Motion to Consolidate and is not prejudicial to Alpha. A comparison of the ability of each party to prudently operate their proposed development plan and thereby, prevent waste, is a fundamental consideration the Division must make when determining which competing application to grant. *See* Order No. R-21420, ¶ 9. In light of the challenging geological characteristics of the subject

area, this factor takes on added significance. Since Ascent is seeking to consolidate Alpha's application with those filed by Mewbourne and Ascent, the question of Alpha's technical expertise is a factor that weighs in favor of consolidating all three applications in a single hearing.

11. The premise of Alpha's contention, that it has suffered prejudice by the preliminary discussion of Alpha's qualifications in the Motion to Consolidate, is that the hearing officer will go into the hearing with a bias against Alpha. Ascent's attorneys reject this premise based on the Division's record of fairly evaluating competing applications. As Alpha notes, this issue will be fully litigated in the crucible of an evidentiary hearing and the Division will decide the issues before it based on that evidence alone.

### **III. Conclusion**

12. For the foregoing reasons, Ascent respectfully requests that its Motion, unopposed, be granted, allowing the parties to proceed, at the discretion of the Division, to a hearing on the merits.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on October 20, 2021:

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