

**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:**

**APPLICATION OF COLGATE OPERATING, LLC
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

**Commission Case No. 21744
Case No. 21629
Order No. R-21575
Order No. R-21575-A
Order No. R-21575-B**

**COLGATE OPERATING LLC'S RESPONSE TO
CIMAREX ENERGY CO.'S MOTION TO INCLUDE AN ADDITIONAL
PROCEDURAL OPTION FOR CONSIDERATION BY THE COMMISSION IN THE
EVIDENTIARY HEARING CONTINUED TO MARCH 10, 2022**

Colgate Operating LLC ("Colgate") files this response to Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc.'s (collectively, "Cimarex") *Motion to Include an Additional Procedural Option for Consideration by the Oil Conservation Commission in the Evidentiary Hearing Continued to March 10, 2022* ("Motion"). As discussed below, Cimarex failed to respond to Colgate's email correspondence and failed to enter an appearance in Case No. 21629, and as such Cimarex has waived any argument that may have been made in the Division proceedings below. Furthermore, Cimarex has stated no cognizable legal basis for including the alleged "additional procedural option for consideration by the Commission," and as such, the Motion should be denied, and the *de novo* appeal should be dismissed as follows:

1. Cimarex filed this *de novo* appeal of Division Case No. 21629 and Division Order No. R-21575 for a determination by the New Mexico Oil Conservation Commission

(“Commission”) as to whether Colgate engaged in good faith negotiations to join Cimarex and its affiliate in the drilling of the Meridian 3 Fed State Com 131H well.

2. Cimarex argues in its Motion that this issue turns on whether Division Order No. R-21575 is sufficient for the Commission to conduct a *de novo* hearing involving adjudication of the competing applications, or whether the order is invalid as a whole, resulting in the remand of the competing applications to the New Mexico Oil Conservation Division (“Division”) to hear the competing applications. Now, Cimarex argues for the first time in the Motion that a third procedural option is justified due to a defect in Colgate’s application that could invalidate Order No. R-21575 only partially, as to Cimarex or the Trustee of the Welborn Trust (“Trustee”), and leave the Order valid as to the remaining owners, pursuant to New Mexico law. *See, e.g. Udhen v. New Mexico Oil Conservation Com’n*, 1991-NMSC-089, ¶ 13, 112 N.M. 528, (showing that due to a defect in notice to a particular owner, the order is void as to that owner, but remains in place for the remaining owners); *Johnson v. New Mexico Oil Conservation Comm’n*, 1999-NMSC-021, ¶ 31, 127 N.M. 120 (invalidating order with respect to specific owners who did not receive notice because applicant did not comply with notice requirements).

3. These cases cited by Cimarex are inapplicable to this proceeding because Colgate did in fact provide notice of the hearing to both Cimarex and the Trustee. *See Colgate* Exhibit 1.

4. Colgate agrees that the “good faith” effort to obtain voluntary joinder with Cimarex issue turns on: (1) whether Colgate made attempts to enter into a voluntary agreement with Cimarex, satisfying the requirement of 19.15.4.12(A)(b)(vi) NMAC, and (2) whether the single email exchange between Cimarex and Colgate at the end of August 2020 satisfies good-faith negotiations.

5. The Division's rules provide the requirements for presentation of a compulsory pooling application at hearing, and specifically requires that the applicant provide "written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence." 19.15.4.12(A)(b)(vi) NMAC.

6. At the Division hearing, Colgate provided the affidavit of Mark Hajdik, landman for Colgate, that includes his "Communication Timeline" reflecting that Colgate began attempting to obtain a voluntary agreement to commit Cimarex's uncommitted interest to Colgate's development plan since July 10, 2020. *See* Colgate Exhibit 1; *see also* Colgate Exhibit B in Case No. 21629. As such, Colgate's exhibits included sufficient evidence of its good faith efforts to obtain voluntary joinder by including copies of relevant correspondence and satisfies the requirements provided in the Division's rules.

7. Further, Colgate has satisfied the requirements for competing compulsory pooling applications, as stated in Commission Order R-20368, to show good faith efforts to obtain Cimarex's voluntary participation in the drilling of the well prior to seeking to force pool the working interest. Order No. R-20368 sets forth the factors that should be considered in evaluating competing development plans in a compulsory pooling case, and describes that a well proposal letter followed up by a subsequent contact with the pooled party is sufficient to satisfy the good faith negotiation requirement prior to seeking Division authority to pool working interests.

8. Colgate made a good faith effort to obtain voluntary joinder by first submitting well proposal letters to working interest owners, including Cimarex, on July 10, 2020. *See* Colgate Exhibit 1, introduced in this evidentiary hearing. Next, on August 18, 2020, Cimarex's landman, John Coffman, emailed Colgate's landman, Mark Hajdik, and made inquiries about the

well proposal that was received by Cimarex. *See* Colgate Exhibit 2, introduced in this evidentiary hearing. In that email, Cimarex's landman only requested information regarding Colgate's plans for the S/2 N/2 acreage, rather than discussing or requesting any further information regarding the N/2 N/2 acreage subject to Case No. 21629. *See id.* In a timely and prudent manner, Mr. Hajdik responded to Mr. Coffman's email on August 31, 2020, but Mr. Coffman never responded. *See id.*

9. The uncontroverted evidence in the record in this *de novo* appeal, as in the underlying case, shows that Cimarex dropped the ball by not responding to the August 31, 2020 email from Mr. Hajdik, and by failing to properly handle the notice of hearing. Cimarex never expressed objection to Colgate's proposed development or operation of the acreage, never discussed competing development plans, and never discussed an interest in operating the acreage itself. Moreover, it is clear that Cimarex never requested any further information from Colgate regarding the deal.

10. Although Cimarex later raised concerns in this *de novo* appeal about misrepresentations in Colgate's landman's affidavit in the underlying case, in fact, Cimarex never entered an appearance in that case, and admits in its *Application to Reopen Case* filed with the Division regarding Colgate's Case No. 21629, that Colgate's "Notice Letter was inadvertently misplaced and was not delivered to Cimarex's designated land team . . . [and that] Cimarex recognizes that the Notice letter was sent within the prescribed time frame prior to the hearing date." *See* Colgate Exhibit 3, introduced in this evidentiary hearing.

11. By failing to enter an appearance at, or prior to the Division hearing in Case No. 21629, Cimarex has waived its objections in this case because it was not a party of record in the underlying Division proceedings. The Commission has held that an entity filing an entry of

appearance after a case is heard does not make it a party of record. *See* Commission Order No. R-14097-A; 19.15.4.10(A) NMAC (describing “parties to adjudicatory proceedings” as “a person to whom statute, rule or order requires notice ... who has entered an appearance in the case; . . .”

12. These instances of negligence by Cimarex are inexcusable, an experienced oil and gas company in these regulatory matters, and should not be characterized as a lack of good faith by Colgate.

13. As stated herein, Division Order No. R-21575 pooling Cimarex’s interests should remain in tact in all respects because Colgate satisfied the good faith negotiation requirement under Division rules and established precedent in Commission Order R-20368.

14. For these reasons, Cimarex’s Motion should be denied based on the evidence in the record in this *de novo* appeal, and Cimarex’s appeal to the Commission in this case should be dismissed.

Respectfully Submitted,

PADILLA LAW FIRM, P.A.

/s/ ***Ernest L. Padilla***

Ernest L. Padilla
Attorney for Colgate Operating, LLC
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
PadillaLawNM@outlook.com

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2022, I served a copy of the foregoing pleading by electronic mail to:

William E. Zimsky
Andrew D. Schill
ABADIE & SCHILL, PC
214 McKenzie Street
Santa Fe, New Mexico 87501
(970) 385-4401
darin@abadieschill.com
bill@abadieschill.com
andrew@abadieschill.com

*Attorneys for Cimarex Energy Co.,
and Magnum Hunter Production, Inc.,
an affiliate of Cimarex Energy*

Michael H. Feldewert
Adam G. Rankin
Julia Broggi
Post Office Box 2208
Santa Fe, NM 87504
(505) 998-4421
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
jbroggi@hollandhart.com

Attorneys for EOG Resources, Inc.

/s/ Ernest L. Padilla

Ernest L. Padilla