

**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-21679, R-21679-A
and R-21679-B**

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

Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively "Cimarex"), files with the Oil Conservation Commission ("Commission") its Reply to Colgate Operating LLC's Response ("Response") to Cimarex's Motion ("Motion") to Include an Additional Procedural Option for Consideration by the Commission in the Evidentiary Hearing Continued to March 10, 2022 ("Reply").

In support of its Motion, Cimarex states the following:

1. Cimarex filed its Motion to inform the Commission of all its options, under New Mexico Law, for venue of the competing applications between Cimarex and Colgate Operating LLC ("Colgate") in these proceedings. The Motion was filed pursuant to Mr. Moander's instructions that considerations of procedural matters are subject to motion practice. *See* Transcript in Case No. 21744, dated February 22, 2022, p. 13, 6:12. The evidentiary hearing is

being held to determine proper venue, whether to return the applications to the New Mexico Oil Conservation Division (“Division”) or to remain at the Commission for their adjudication.

2. In following proper procedure, Cimarex did not submit, nor intend to submit, the Motion to disrupt the proceedings but to uphold its duty of candor to the tribunal as it found cases that provide the Commission with an additional legal basis for venue selection. Colgate misconstrues the two cases provided by Cimarex¹ as pertaining only to defective notice and then proceeds, in opportunistic fashion, to disrupt the proceedings by wasting the Commission’s time and resources with repetitious and immaterial arguments that Colgate’s notice was timely and proper. *See* Colgate’s Response, p. 2, ¶ 3, and subsequent 3 pages. Cimarex’s two cases stand for the proposition that any defect, not just notice, but defects such as failing to make sufficient attempts to gain voluntary agreement and failing to engage in good-faith negotiations could result in Order No. R-21575 being void only as to Cimarex and/or the Trustee of the Welborn Trust (“Trustee”), thereby allowing the Commission to maintain at its discretion venue for the competing applications.

3. Furthermore, Cimarex acknowledged independently that Colgate’s notice was timely, and the Commission has already ruled on that issue, of which Colgate is well aware. *See* Order No. R-21679 I(c) and II(h) (Cimarex acknowledging notice was timely, and the Commission rejecting Cimarex’s excuses for not appearing at the hearing). In effect, Colgate’s Response directly challenges, in the middle of these proceedings, a ruling already established and published by the Commission. If Colgate desires to make this type of challenge, it has the option to do so in district court after the proper conclusion of the *de novo* hearing.

¹ *Udhen v. New Mexico Oil Conservation Com’n*, 1991-NMSC-089, ¶ 13, 112 N.M. 528; and *Johnson v. New Mexico Conservation Comm’n*, 1999-NMSC-021, ¶ 31, 127 N.M. 120.

4. The findings and conclusions of law made by the Commission in Order No. R-21679 are clearly stated and are not to be trifled with: Cimarex entered its appearance prior to entry of the Division Order No. R-21575. Order No. R-21679, § II(h). Cimarex did move to reopen the Division case after entry of Order No. R-21575, and in doing so, supplied evidence previously unseen by the Division. *Id.* at § II(j). And finally, the Commission found that, in passing the *New Energy* test, Cimarex met the requirements of NMAC 19.15.4.10 and those of NMSA 1978 §§ 70-2-25 and 70-2-13. As a result, the Commission ruled that Cimarex is a party of record to the proceedings and has secured its right, as a matter of law, to this *de novo* hearing, duly granted by the Commission.

5. As a party of record, Cimarex has properly filed a competing application with a development plan superior to Colgate's plan. Cimarex for its Crest wells has proposed drilling across a 3-mile unit, which promises to outproduce the 2-mile Meridian well proposed by Colgate. Once the threshold for hearing the competing applications has been met, which clearly it has, the Commission, and Division, whichever the case may turn out to be, have an obligation to adjudicate the cases in order to protect correlative rights and prevent waste. *See* NMSA 1978 § 70-2-11.

6. Colgate's baseless challenge to the Commission's rulings and proceedings threatens to consume an entire morning of the Commission's time, when Cimarex's request for consideration of the additional option was intended to take at most ten minutes to consider and decide, allowing final and timely conclusion of the evidentiary hearing.

7. For the foregoing reasons, Cimarex respectfully requests that the Commission grant Cimarex's Motion to the extent that it was filed in a manner instructed by the Commission for proper consideration of procedural matters and that its intent is to further inform the

Commission of its available options regarding selection of venue for adjudication of the competing applications. Furthermore, Cimarex requests that Colgate's now second attempt to dismiss the case be denied in the same manner that the Commission, in Order No. R-21679, denied Colgate's first attempt.

Respectfully Submitted,

ABADIE & SCHILL, PC

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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 Commission and was served on counsel of record, or on the party of record, if no counsel was provided, via electronic mail on March 9, 2022:

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