

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

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

APPLICATION OF DELAWARE ENERGY,
LLC TO REVOKE THE INJECTION AUTHORITY
GRANTED UNDER SWD-1680 FOR THE ALPHA
SWD NO. 1 WELL OPERATED BY ALPHA SWD
OPERATING, LLC, EDDY COUNTY, NEW MEXICO.

CASE NO. 15855
(De novo)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

September 13, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
September 13, 2018, at the New Mexico Energy, Minerals
and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

FOR APPLICANT OF DELAWARE ENERGY, LLC:

MICHAEL H. FELDEWERT, ESQ.
HOLLAND & HART, LLP
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421
mfeldewert@hollandhart.com

INDEX

	PAGE
Case Number 15855 Called	3
Request for Rehearing - Oral Argument by Mr. Feldewert	4
Executive Session/Findings of the Commission	23/24
Proceedings Conclude	26
Certificate of Court Reporter	27

EXHIBITS OFFERED AND ADMITTED

(No Exhibits.)

(9:43 a.m.)

1 CHAIRWOMAN RILEY: The next case is Case
2 15855, de novo, application of Delaware Energy, LLC to
3 revoke the injection authority granted under SWD-1680
4 for the Alpha SWD No. 1 Well operated by Alpha SWD
5 Operating, LLC, Eddy County, New Mexico.

6 Mr. Feldewert.

7 MR. FELDEWERT: Madam Chair, members of the
8 Commission, Michael Feldewert, with the Santa Fe office
9 of Holland & Hart, appearing on behalf of Delaware
10 Energy, LLC.

11 And if I may approach, I have a statement.

12 CHAIRWOMAN RILEY: Please do.

13 MR. FELDEWERT: I'm providing a couple of
14 statutes, regulations that I will be referencing during
15 my argument.

16 CHAIRWOMAN RILEY: Do we not have anybody
17 here for Alpha? Mr. Larson is not here?

18 Okay.

19 MR. BRANCARD: So it's up to the Commission
20 whether you want to hear oral argument or consider this
21 on the pleadings that were filed. I don't believe Alpha
22 responded to the application for rehearing.

23 MR. FELDEWERT: So, essentially, Madam
24 Chair, I would be referencing the handout during my
25 prepared argument.

1 CHAIRWOMAN RILEY: I prefer to hear it, so
2 go ahead, Mr. Feldewert.

3 MR. FELDEWERT: Madam Chair, members of the
4 Commission, one of the reasons we filed a request for
5 rehearing is because the Commission has adopted in its
6 order a legal conclusion that the Division examiners
7 lack jurisdiction to conduct adjudicatory hearings, to
8 correct undisputed errors in the issuance of an
9 administrative injection permit. And I find that
10 surprising because the Oil and Gas Act broadly empowers
11 these examiners to conduct hearings on any matter vested
12 with the Division under the Oil and Gas Act, and the
13 matter for hearing does not have to be expressly set out
14 in the Oil and Gas Act itself.

15 If you look at the handout on the first
16 page, 70-2-6 is a broad grant of power to the Division.
17 I'm not going to read the whole thing, but it includes
18 the ability to enforce effectively the provisions of
19 this Act or any other law of this state relating to the
20 conservation of oil and gas and the prevention of waste
21 of potash as a result of oil and gas operations.

22 70-2-10 then provides the Division again
23 with broad authority. And in particular what I want to
24 focus on is the third line down halfway through it where
25 it says, "And to do whatever may be reasonably necessary

1 to carry out the purpose of this Act whether or not
2 indicated or specified in any section thereof." That's
3 a fundamental point of this Oil and Gas Act.

4 So then when we move to 70-2-13, which
5 discusses the Division's ability to effectively enforce,
6 it includes the appointment of one or more examiners for
7 the purpose of conducting evidentiary hearings on
8 matters properly coming before the Division. So the
9 examiner hearings are not limited to any specific
10 matter. It is on any matter, whether or not indicated
11 or specified in this section, if it's properly brought
12 before this Division.

13 So what we have here, we have a broad grant
14 of examiner hearing authority, and I don't understand
15 why this Commission now wants to limit that authority by
16 suggesting that the examiners lack jurisdiction to
17 consider and correct undisputed procedural errors that
18 arose during the issuance of an injection permit that
19 was issued under an administrative process. I think
20 it's completely inconsistent with this broad range of
21 the statutory authority.

22 It's also inconsistent with your
23 regulations. Look at the second page of the handout,
24 "Initiating an Adjudicatory Hearing," very broad. "The
25 Division, the Attorney General, an operator or producer

1 or other persons with standing may file an application
2 with the Division for an adjudicatory hearing." Again,
3 as the statutes point out, there is no express
4 limitation on the jurisdiction of the Division
5 examiners.

6 Your order is also inconsistent with the
7 actions taken by the Division Director in this case at
8 that time. Okay? When this was filed, that Division
9 Director determined that Delaware had standing to
10 contest this administrative permit. That Division
11 Director set this matter for an examiner hearing. That
12 Division Director issued an emergency order staying the
13 administrative permit pending the examiner hearing, and
14 that Division Director issued a subpoena for documents
15 that were relevant to the issue that was before the
16 examiners under that hearing. He recognized the clear
17 statutory authority for the examiners to address the
18 propriety of the issuance of an administrative permit.

19 Your order is inconsistent with the
20 Division examiners and their legal counsel. They held
21 that evidentiary hearing in November on the issuance of
22 Alpha's administrative permit. They reviewed the
23 administrative record and recommended a course of action
24 to the director. The director issued an order revoking
25 that administrative authority because the permit was

1 issued improperly. The examiners and their legal
2 counsel and the Division Director recognized their clear
3 statutory authority to review the issuance of an
4 injection permit.

5 So I think it's bad policy and I think it's
6 legally incorrect for you now to issue an order that
7 limits the jurisdiction of the examiners under the Oil
8 and Gas Act by suggesting that they don't have authority
9 to review and correct errors that occur during the
10 issuance of an administrative injection permit, a permit
11 issued under the administrative process without any
12 hearing.

13 The second point about your order is, with
14 all due respect, it is also wrong to suggest that
15 Delaware should have appealed or applied to the
16 Commission to address the administrative injection
17 permit de novo under 70-2-13. After granting the broad
18 authority to the Division examiners to conduct hearings
19 on any matter that properly comes before the Division,
20 that same section, the very section you cite in your
21 order, restricts an aggrieved party's right to a de novo
22 hearing before the Commission to a circumstance where an
23 evidentiary hearing has first been held before a
24 Division examiner and an order has been received by the
25 Division.

1 Look at the last -- second page up at the
2 top, 70-2-13," the section you cite. It says, "When any
3 matter or proceeding is referred to an examiner and a
4 decision is rendered thereon, any part party of record
5 adversely affected shall have the right to have the
6 matter heard de novo before the Commission."

7 Your Division regulations -- that's that
8 one there at the bottom, second page of the handout --
9 19.15.4.23A, "De Novo Applications," it states, "When
10 the Division enters an order pursuant to a hearing that
11 a Division examiner held," then you have a de novo right
12 to the Commission.

13 Alpha's injection application, which was
14 challenged by Delaware, was not the product of an
15 examiner hearing. It was granted administratively under
16 the administrative provisions of 19.15.6.8. The
17 issuance of that administrative injection permit did not
18 trigger any de novo right to go before the Commission
19 under the plain language of the statute, yet your order,
20 I would say boldly, suggests that a de novo right under
21 this statute and this regulation, you say extends when
22 there is a public notice and an opportunity for hearing.
23 I'm looking at page 3 page 5 of your order, paragraph
24 25, last sentence. "The Commission finds that a final
25 decision of the Division which is issued after a

1 hearing," and then it says, "or after a public notice
2 and opportunity for hearing, is subject to review by the
3 Commission under 70-2-13." Where does that come from?

4 Neither the statute nor the regulation
5 supports this legal proposition that if you have an
6 opportunity for a hearing, that you can then go before
7 the Commission de novo. It doesn't say, for example, in
8 the statute when a matter may be referred for hearing.
9 It says, "When any matter is referred to hearing before
10 a Division examiner." Your regulation doesn't say if a
11 permit is issued following an opportunity for hearing,
12 then you can go de novo before the Commission. No. It
13 says, "When the Division enters an order pursuant to a
14 hearing that a Division examiner held."

15 Delaware did not have the right to go
16 before the Commission de novo with respect to Alpha's
17 issuance -- or the issuance of an administrative permit
18 to Alpha. It did not exist. The avenue for them to
19 contest the granting of that administrative permit was
20 under the broad authority given to the examiners under
21 the Oil and Gas Act to hold an evidentiary hearing on
22 any matter properly before the Division. And these
23 examiners in this case reviewed that administrative
24 record. They determined that it was improperly issued.
25 They entered an order revoking that injection authority

1 thereby correcting the Divison's order. And it's wrong
2 for you, I submit, to suggest on your own initiative
3 that the examiners lack jurisdiction to do that, that
4 they lack jurisdiction to correct undisputed errors in
5 the issuance of an administrative permit or even for you
6 to suggest that Delaware acted improperly in not going
7 before the Commission once they found out about that
8 administrative permit. They didn't have a right to go
9 before the Commission. Their only option was to go
10 before the examiners, which they did.

11 But I think it's bad policy, and I think
12 it's contrary to law to limit the jurisdiction of these
13 examiners when they are more than capable of correcting
14 errors and then fashioning an appropriate remedy on a
15 case-by-case basis. I mean, I heard the concern, oh, my
16 gosh, we think we're opening up a Pandora's box.

17 But each of these cases are going to have
18 unique facts. Each of these cases are going to have
19 different time periods involved between when the hearing
20 was held and the issuance of the injection permit. The
21 nature of the procedural defect is going to be different
22 in each one of these cases. The impact, if any, on an
23 aggrieved party is going to be different on each of
24 these cases, and the current state of the injection
25 operations are going to be different in each one of

1 these cases.

2 Here, this procedural defect was discovered
3 and corrected before any injection well was drilled.
4 And there is no doubt that this had -- the injection
5 permit had an adverse impact on Delaware, which is why
6 they filed their application, and there is a broad range
7 of equitable and reasonable remedies available to cure
8 the issue and cure the harm. But there is no reason and
9 it is legally deficient for the Commission to avoid
10 fashioning the appropriate remedy by going down a course
11 here with this order that limits the broad jurisdiction
12 of your examiners and rests on a constrained and
13 unprecedented reading of the Division and the
14 Commission's authority under this Act.

15 So we ask that since this record
16 demonstrates that Alpha's injection permit was clearly
17 and undisputedly improperly issued and since this error
18 was discovered long before the well was even drilled,
19 permitted or staked, we ask that you reconsider your
20 decision, that you uphold the order held by the Division
21 correcting this error and that you, either by entry
22 yourself or with input from the parties or the Division,
23 fashion the appropriate remedy that counts for this
24 particular and unique circumstances associated with this
25 case.

1 CHAIRWOMAN RILEY: Mr. Brancard?

2 MR. BRANCARD: Sure. I guess I'll just
3 throw a softball at you, which is what is the limit on
4 the Division Director's authority to hear cases?

5 MR. FELDEWERT: Zero. The Oil and Gas Act
6 indicates that it's very broad. The only question is
7 whether the person filing the application has standing.

8 MR. BRANCARD: Okay. Which issue was
9 raised before the Commission and not decided by the
10 Commission.

11 So that's the scenario that we discussed
12 before the Commission, that somebody could come back --
13 or in the case that Alpha mentioned, that they had a --
14 it was a Delaware permit that had been issued several
15 years ago and they drilled the well already, and they
16 found the same problem existed, where the application
17 had been issued too quickly.

18 MR. FELDEWERT: There wasn't a hearing on
19 that, but let's take their --

20 MR. BRANCARD: But they could come back to
21 the Division for a hearing on that case, to revoke your
22 authority to inject.

23 MR. FELDEWERT: If they demonstrate
24 standing. Is there an injury in fact? Are they an
25 aggrieved party? Delaware was in a very unique

1 circumstance. They had a prior-filed application
2 pending before the Division that the objections to that
3 application had been resolved before the Alpha injection
4 permit was issued, so that application was pending. It
5 was being discussed by the parties. They never got
6 notice. And, clearly, when you have an injection permit
7 issued right next door to your site and it's the same
8 injection zone, it's going to have an impact on your
9 ability to have your permit approved. So they were an
10 aggrieved party. They had standing, as the prior
11 director found when he set this matter for hearing. So
12 there is a threshold. You've got to have standing.

13 MR. BRANCARD: But if they did have
14 standing, they could challenge that.

15 MR. FELDEWERT: Certainly. And then, you
16 know, you've got to deal with what's the remedy? What's
17 the harm? What's the remedy going to be given the
18 circumstances with that particular case and given the
19 length of time that occurred between the time the permit
20 was filed and the allegation of error.

21 MR. BRANCARD: And this would apply to any
22 permit issued without a hearing, so any permit to drill
23 a well?

24 MR. FELDEWERT: What would apply?

25 MR. BRANCARD: The ability of the Division

1 Director to go back and relook at the issuance of that
2 permit.

3 MR. FELDEWERT: Well, you'd have to have a
4 party with standing that would have to file an
5 application alleging defects in the issuance of that
6 permit.

7 COMMISSIONER BALCH: So it would apply to
8 any well potentially?

9 MR. FELDEWERT: These circumstances could
10 apply potentially. Certainly.

11 COMMISSIONER BALCH: Which I think is
12 exactly the Pandora's box we didn't want to open.

13 MR. FELDEWERT: Well, what are you afraid
14 of? What are you afraid of?

15 COMMISSIONER BALCH: Me personally or the
16 Commission?

17 (Laughter.)

18 CHAIRWOMAN RILEY: If there is a challenge
19 to the permit and another company's gone in and drilled
20 and expended money and all that goes along with that and
21 then that challenge is won, what do you do with the --

22 MR. FELDEWERT: That's where the remedy
23 comes in. What's the appropriate remedy under the
24 circumstances in the case? In other words, the party
25 that brought the action, how long did they sit on it?

1 What has occurred between now and then? What is
2 equitable in that circumstance? You know, each case is
3 going to have its own facts, and it's going to have its
4 own unique circumstances. And you have -- there is no
5 limitation on what your remedy is. I mean, you have a
6 broad range of remedies available to address the
7 circumstances of each particular case if -- if a party
8 with standing is really going to bring an application
9 for hearing, because the question I would have is: What
10 relief are they going to get? What are they really
11 going to obtain? And do they have standing? Are they
12 an aggrieved party? I mean, there are a lot of hurdles
13 they have to get over even to get to a hearing, to an
14 examiner hearing, and then the examiners get to look at
15 the evidence, ascertain what the appropriate remedy is
16 and determine whether any remedy is appropriate, and
17 they are more than capable of doing that.

18 I don't know why you would want to
19 arbitrarily limit the broad grant of authority granted
20 to your examiners by going through a bunch of legal
21 gyrations to get to the conclusion that you did here
22 because you're worried about some circumstance where
23 parties are going to come in and challenge permits. If
24 they were improperly issued, maybe the issue should be
25 addressed under the right circumstances, taking into

1 account what has occurred over the period of time.

2 MR. BRANCARD: Well, I mean, I do agree
3 that the agency has broad authority to deal with issues
4 of waste and correlative rights, but this is a
5 technicality issue, a different kind of issue, of which
6 there are numerous technical hurdles that need to be
7 overcome in the application process.

8 COMMISSIONER MARTIN: Being so, is that a
9 legitimate objection somebody could have
10 technicality-wise?

11 MR. BRANCARD: Sure. So the question is:
12 What's the process, and is there a time limit to that
13 process?

14 COMMISSIONER BALCH: And Division Directors
15 do change, priorities change. Could you go back and
16 second-guess one or two Division Directors before you
17 and the actions there? Where do draw the line?

18 MR. BRANCARD: You could have a -- you
19 could have a huge, you know, political shift in what
20 people think is important and what people think is
21 proper standing. And I think Mr. Feldewert's argument
22 about standing, he's already arguing a fairly broad
23 definition of standing in order for him to get his foot
24 in the door in this case. You're not a working interest
25 owner. You're not a mineral interest owner. You're not

1 at an operator in this situation. You're simply another
2 applicant --

3 MR. FELDEWERT: We have an injury in fact.

4 MR. BRANCARD: -- in that area of review.

5 MR. FELDEWERT: They do have an injury in
6 fact. That's the first element of standing, injury in
7 fact. Not hypothetical. Injury in fact.

8 CHAIRWOMAN RILEY: I don't have all the
9 documents in front of me anymore, but the one thing I
10 was a little confused on in the scenario is there was an
11 application submitted, and then it was objected to. And
12 then Delaware worked through that objection, but a
13 second application was submitted. So I never really
14 understood why we -- that committee went to the second
15 application rather than pursuing the one that was
16 already in front of the Division.

17 MR. FELDEWERT: I would suggest, if you
18 look at what they did, they filed their application, got
19 an objection by an offsetting operator who was worried
20 about the casing program. They discussed the issue. It
21 took a little while. They discussed the issue and got
22 the casing issue resolved, and so the additional filing
23 was an amendment to the initial application to address
24 the resolution of the casing.

25 CHAIRWOMAN RILEY: It wasn't assigned a new

1 application number or --

2 MR. FELDEWERT: Well, you know, I don't
3 remember if the Division assigned a new application
4 number to it or not. If they did, I don't know why.

5 CHAIRWOMAN RILEY: Because that's -- I
6 mean, this is difficult without both parties here to
7 argue their sides. And I don't want to argue the other
8 side, but I thought that the original one got canceled.

9 MR. FELDEWERT: Nobody informed Delaware
10 that it was canceled. The Division did not act like it
11 was canceled. There was an allegation that it was
12 canceled.

13 CHAIRWOMAN RILEY: Yeah. And I don't think
14 that ever got cleared up. But that goes to standing.

15 MR. FELDEWERT: It didn't. And that would
16 be part of the rehearing. If we're going to have a
17 rehearing, that would be part of the rehearing process,
18 to ascertain the appropriate remedy. But we didn't get
19 to have a rehearing. You guys booted us out because you
20 said we should have gone to you directly. And I'm
21 telling you, we couldn't do it. We didn't have the de
22 novo right. We had to go before the examiners.

23 MR. BRANCARD: I mean, I guess I just
24 simply take a very -- you know, take our statutes at
25 face value and try to create a process that is sort of

1 clear as to what the role of the Commission is, what the
2 role of the Division is and try to draw a line, you
3 know. The Act is not always quite clear about what the
4 role of the Commission is and what the role of the
5 Division is. On the one hand, there are sort of broad
6 grants of authority to deal with issues such as waste
7 and correlative rights. And on the other hand, I don't
8 think that the Division has sort of broad remedial
9 authority to deal with every problem that comes up and
10 every flaw that comes up and that there needs to be a
11 process followed. And I think we're going to deal with
12 that issue as we go forward today in other cases, what
13 the proper role of the Commission is and who has
14 standing.

15 So I think there is a process, and the
16 process should have been followed in this case. And
17 simply inventing a process, which is what I've heard
18 here, I commend the parties for their creativity. I
19 think that we need to sort of establish what the process
20 is going forward. It's an unfortunate situation. We
21 have a situation where a permit was issued too quickly.
22 Would it appeal or not is unclear. Nobody actually
23 filed anything protesting the application before or
24 after the permit was issued in that time frame. So it's
25 unclear that anybody's really harmed by the permit being

1 issued too quickly.

2 So it's a question of: Do we follow the
3 rules in this case and try to give a clear division as
4 to what the role of the Division is and what the role of
5 the Commission is and how we deal with these permits?
6 We're dealing with an 83-year-old statute here where
7 everything was done by orders and hearings years ago,
8 and now we issue a whole lot of permits without
9 hearings. So that has to fit in with the process
10 somehow. And just because you don't issue a permit
11 without a hearing, I think the argument of Delaware is
12 that suddenly that permit has less finality than an
13 order that is issued after a hearing.

14 MR. FELDEWERT: Dead-on. That's our
15 argument. Yeah. It's not a final order.

16 MR. BRANCARD: Yeah. And so, I mean,
17 therefore, you know, our authority under the federal
18 Safe Drinking Water Act, which is delegated to us to
19 issue injection well permits, is a Class 2 injection
20 well permit. We're basically saying that those permits
21 are sort of contingent, contingent upon somebody
22 challenging them at any time in the future.

23 COMMISSIONER MARTIN: Well, or you could
24 turn that around, couldn't you? Contingent on the
25 Division doing it correctly to begin with. I mean, that

1 is not an unusual request.

2 MR. BRANCARD: Right. But if you issue --
3 if they issued it after a hearing and nobody filed an
4 appeal with the Commission --

5 MR. FELDEWERT: You have a final order.

6 MR. BRANCARD: -- you have a final order.
7 So there is no question. There is no contingency at
8 that point. So we're creating two classes of decisions
9 by the Division, one which are final subject to an
10 appeal to the Commission if you don't appeal -- it's
11 final -- others which can be appealed at any time.

12 MR. FELDEWERT: If I may, I think
13 "appealed" is the wrong word. I mean, I can't appeal
14 something if I'm not a party to a case. I can't ask for
15 a rehearing if I'm not a party to the case. My avenue
16 for relief -- if I ascertain that there was an injection
17 permit that was improperly issued that we believe caused
18 us harm, our avenue for relief is to request an examiner
19 hearing, in which, in our application, we're going to
20 have to demonstrate standing.

21 CHAIRWOMAN RILEY: So did you demonstrate
22 standing?

23 MR. FELDEWERT: Yes, because it was set for
24 hearing, and we had a hearing. There was no question
25 about standing.

1 MR. BRANCARD: I disagree. I think Alpha
2 raised that issue before the Commission, but because the
3 Commission was focused on other issues, they didn't want
4 to deal with the standing issue. So, I mean, I think we
5 have to grant the assumption that they had standing
6 because the Division heard the case. I believe the
7 Division thought they had standing.

8 COMMISSIONER MARTIN: I agree.

9 MR. BRANCARD: And whether the Division
10 contemplated the issue or not --

11 MR. FELDEWERT: We had an all-day hearing.

12 MR. BRANCARD: So that's -- I mean,
13 Mr. Feldewert agrees that they're creating two classes
14 of permits here. I'm having to deal with EPA regularly
15 about the primacy of our program. I worry about
16 creating contingencies in our permits, that our permits
17 are not fine, but that's just because this is an EPA
18 program. But this would apply, as Mr. Balch said, to
19 any APD at issue without a hearing.

20 COMMISSIONER BALCH: Which is the majority
21 of APDs.

22 MR. BRANCARD: Right.

23 COMMISSIONER MARTIN: But the Division
24 grants the primacy based on the statutes as written and
25 the regulations as written at the time and still. I

1 mean, I find Mr. Feldewert's arguments compelling, and
2 the issue of a Pandora's box is not -- to me is not a
3 legitimate issue.

4 MR. BRANCARD: Would you like to go into
5 executive session?

6 COMMISSIONER BALCH: Yeah. I would
7 actually like to move that we go into executive
8 association to discuss the application for rehearing.

9 CHAIRWOMAN RILEY: Do we have a second?

10 COMMISSIONER MARTIN: Second, although
11 that's how we got into trouble in the first place.

12 CHAIRWOMAN RILEY: I know. We have been
13 here before.

14 All right. So we're in executive session.
15 Mary, we're off the record.

16 (Executive session, 10:11 a.m. to 10:42
17 a.m.)

18 CHAIRWOMAN RILEY: We're back in open
19 session.

20 During closed session, we discussed only
21 those matters requested by Delaware.

22 Do we have a motion, please?

23 COMMISSIONER MARTIN: Go ahead.

24 COMMISSIONER BALCH: I'd move we go back
25 into regular session.

1 COMMISSIONER MARTIN: Second.

2 CHAIRWOMAN RILEY: We deliberated on how to
3 handle this, and I think we've come up with a
4 conclusion. We're going to grant the rehearing.

5 And, Mr. Brancard, would you please
6 describe how we're going to handle this?

7 MR. BRANCARD: Okay. The Commission will
8 try to clarify this in its order, particularly since
9 Alpha is not here, so that both parties understand the
10 scope of the rehearing on this case.

11 In this case, the Commission has already
12 received largely the record in this case, so it's not
13 contemplating a really significant rehearing in this
14 case. However, the Commission has looked again at
15 Section 70-2-13, the final sentence, which says that
16 "when any matter or proceeding is referred to an
17 examiner," and then you have the right to have that
18 matter heard de novo before the Commission. In this
19 case, the Commission is looking at that language as
20 being fairly broad and, therefore, considers the entire
21 matter of the case, including the initial application of
22 Alpha, whether it was complied to under the rules as
23 part of the case that is before the Commission. So the
24 Commission will be -- has the record in front of it. It
25 may allow argument on that issue, and in this case, as

1 stated before, the Commission is interested in an
2 appropriate remedy that the Commission can fashion here
3 to deal with the particular circumstances of this case
4 before it.

5 CHAIRWOMAN RILEY: So, Mr. Brancard, would
6 you please prepare an order outlining that, and we'll
7 get that reviewed and approved?

8 COMMISSIONER BALCH: I think this would be
9 pretty quickly done so that we can try and rehear this
10 in October.

11 CHAIRWOMAN RILEY: Okay.

12 COMMISSIONER BALCH: So I would move that
13 we grant the authority for Commission Chair to sign that
14 order so we don't have to wait to sign it.

15 COMMISSIONER MARTIN: I second.

16 MR. BRANCARD: So I think you just need to
17 formally grant the application for rehearing in
18 accordance with an order.

19 CHAIRWOMAN RILEY: Okay. So do I have a
20 motion to approve Delaware's application for rehearing?

21 COMMISSIONER MARTIN: I so move.

22 COMMISSIONER BALCH: And second it.

23 CHAIRWOMAN RILEY: And all those in favor?

24 COMMISSIONER BALCH: Aye.

25 COMMISSIONER MARTIN: Aye.

1 CHAIRWOMAN RILEY: Aye.

2 (Ayes are unanimous.)

3 MR. FELDEWERT: Thank you for your time.

4 CHAIRWOMAN RILEY: Thank you,

5 Mr. Feldewert.

6 (Case Number 15855 concludes, 10:45 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 17th day of October 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
Paul Baca Professional Court Reporters

25