

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 CASE NO. 15855
TO REVOKE THE INJECTION AUTHORITY (De Novo)
GRANTED UNDER SWD-1680 FOR THE ALPHA
SWD NO. 1 WELL OPERATED BY ALPHA SWD
OPERATING, LLC, EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

October 11, 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,
October 11, 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.

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APPEARANCES

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EXHIBITS OFFERED AND ADMITTED

(No exhibits.)

1 (9:08 a.m.)

2 CHAIRWOMAN RILEY: The next item, item
3 number five, the pre-hearing conference regarding
4 de novo Case Number 15855. The rehearing of this case
5 will be continued to the December 13th Commission
6 meeting.

7 And so this is de novo, application of
8 Delaware Energy, LLC to revoke the injection authority
9 granted under SWD-1680 for the Alpha SWD No. 1 well
10 operated by Alpha SWD Operating, LLC, Eddy County, New
11 Mexico.

12 So the parties are here. Can I please have
13 announcement of parties and counsel, please?

14 MR. FELDEWERT: May it please the
15 Commission, Madam Chair, members of the Commission,
16 Michael Feldewert, with the Santa Fe office of Holland &
17 Hart, appearing on behalf of the Applicant in the
18 Division hearing below, Delaware Energy, LLC.

19 MR. LARSON: Good morning, Madam Chair,
20 Commissioners. Gary Larson, of Hinkle Shanor in Santa
21 Fe, on behalf of de novo Applicant, Alpha SWD Operating.

22 CHAIRWOMAN RILEY: So we're going to have a
23 pre-hearing conference, I understand, to discuss what
24 we're going to do at the hearing?

25 MR. FELDEWERT: Yes. Yes. I think it

1 stems out of the fact that -- I know it's undisputed
2 that the order was issued in violation of the
3 regulation -- of the time frame required by the
4 regulation. That has been demonstrated and conceded.
5 So in light of that, certainly myself and I suppose Gary
6 are kind of wondering which way the Commission would
7 like to proceed at the December hearing so that we don't
8 waste any more of your time than we need to with witness
9 testimony.

10 So in other words, I don't know if the
11 hearing is going to be focused on, for example, what the
12 proper remedy should be or whether you need us to come
13 in and address issues beyond the fact that it was issued
14 prematurely. In other words, is the hearing about what
15 should occur now that the order is issued prematurely,
16 what the remedy should be, or if there are other issues
17 that you think the parties need to be prepared to
18 address at the December hearing so that we make the best
19 use of your time.

20 CHAIRWOMAN RILEY: Mr. Brancard, do you
21 want to speak to what --

22 MR. BRANCARD: Well, this, in part, relates
23 to what the Commission would like to hear and what the
24 Commission based its decision on the rehearing about. I
25 think that would probably be for Mr. Larson's benefit,

1 since he wasn't here for the discussion, the rehearing
2 motion, at the last meeting, and to what exactly the
3 issue you think is before the Commission at this point.

4 We have a finding in the current order
5 related to the timing of the application, so we have
6 facts related to that issue, as Mr. Feldewert has
7 pointed out, in the record, whether the Commission wants
8 to see more facts or a repeat of the facts. It's sort
9 of up to the Commission.

10 The issue, I think, that the Commission
11 directly spoke to at the rehearing discussion would be
12 what's the proper remedy in this matter. I think that
13 was something that had been posed to the parties before
14 but really had not been addressed directly by the
15 Commission.

16 COMMISSIONER MARTIN: I for one don't have
17 any unaddressed issues in this case, and I'm ready to
18 see this --

19 MR. LARSON: Madam Chair, if I may.

20 CHAIRWOMAN RILEY: Yes.

21 MR. LARSON: As you-all are aware, this
22 case kind of got off the rails with Mr. Feldewert's
23 motion for judgment based on the record. My position
24 all along has been that there are issues other than the
25 15-day waiting period -- the application. His

1 application addresses notice issues. We have raised the
2 issue of standing, which the Commission has yet to rule
3 on. So it's Alpha's position that we should have the
4 opportunity to present a full case in opposition to the
5 application.

6 CHAIRWOMAN RILEY: So essentially we would
7 just start over?

8 MR. LARSON: Basically, yes.

9 MR. FELDEWERT: I would proffer this
10 observation. One is that the issue of notice or lack of
11 notice to Delaware about that administrative proceeding
12 is really -- I would think goes away now that the issue
13 of -- now that it's been established that the order was
14 issued prematurely. We can certainly address that if
15 you want to with the Uhden case and other similar case
16 law. I don't think there is any debate that no notice
17 was provided to Delaware. I think their position is
18 that they didn't have to provide notice to Delaware
19 despite some of the facts that bear on that. So we can
20 certainly, if you want to, address the notice issue, but
21 I guess my point is clearly there was a violation of a
22 timeline. So I don't know how much time you need to
23 take out of your busy schedules to address issues that
24 are really extraneous at this point to that.

25 COMMISSIONER BALCH: Correct me if I'm

1 wrong, but I seem to recall the discussion that we had
2 was really revolving around what is the appropriate
3 remedy in a case with a prematurely filed order like
4 that. There is nothing in the statute that we were able
5 to find to directly address that. So I think that was
6 the biggest question in my mind, is legally what is the
7 most appropriate remedy for that type of a situation.

8 CHAIRWOMAN RILEY: I thought what we had
9 decided was that we were going to tick the clock back
10 and allow the additional days so that a protest could be
11 made. So did we not do that?

12 MR. BRANCARD: Well, I think you need a
13 rehearing to do that.

14 CHAIRWOMAN RILEY: Oh, we do?

15 MR. BRANCARD: Yeah.

16 COMMISSIONER BALCH: Certainly that was one
17 option we had. And I think that may be the only thing
18 we can do, but I think that there was an interest, at
19 least from Mr. Brancard's point of view and mine, to
20 hear what an appropriate remedy would be within the
21 statutes. But we can definitely lean towards the
22 Commission resetting the clock and having everybody
23 start over.

24 CHAIRWOMAN RILEY: Uh-huh.

25 COMMISSIONER BALCH: But how do we get to

1 that place is perhaps the bigger question?

2 MR. BRANCARD: Well, there are two ways of
3 looking at this. One is -- to Mr. Larson's point --
4 that we've never really had a full hearing on this
5 issue. But the other perspective is, obviously, that
6 through various other hearings and matters and filings,
7 we have seen a large part of the documentary record on
8 the issues, enough so the Commission was able to enter
9 the findings about the timeliness question.

10 So the question is: Given the record that
11 is currently before the Commission, what would be the
12 appropriate thing to hear in December? Would it be an
13 opportunity for Mr. Larson, since his client is clearly
14 the one in jeopardy here, to present a full case about
15 what happened, or should it just simply be you have
16 already established the facts and the factual findings,
17 and, therefore, the only issue really is the remedy and
18 you don't want any evidence or just simply argument
19 about what the appropriate remedy would be?

20 I guess the question is, Mr. Larson -- I
21 mean, you raised one other issue, which is standing,
22 that I assume you'd like to present to the Commission.

23 MR. LARSON: Yes. And then I remember you
24 specifically said at the last full hearing that the
25 Commission had decided not to rule on the issue of

1 standing.

2 MR. BRANCARD: Yeah. I don't think the
3 issue was really before the Commission. And so I think
4 you've sort of alluded to it in some of your pleadings,
5 but --

6 MR. LARSON: Yes. And I think that that's
7 an appropriate issue because if Delaware, in fact,
8 didn't have a pending application, they would have no
9 standing to oppose the order granting Alpha SWD's --

10 COMMISSIONER BALCH: Well, if the reason
11 they didn't have a pending application is because of a
12 clerical error, what is the appropriate remedy?

13 MR. BRANCARD: Well, obviously, that's a
14 whole issue that, you know, I'm sure Mr. Feldewert has
15 his own perspective on standing in this case about and
16 what is for an injection application the appropriate
17 standing. And I just want to sort of lay out what I
18 think may be a different perspective on the standing
19 issue, which, if you're going to raise that issue, I
20 want the parties to address, which is that, you know,
21 our injection rule is a rule that we have in place
22 because we have primacy from US EPA to issue injection
23 permits, okay, and is there anything in our rule and the
24 EPA rules that contemplates a different version of
25 standing than, say, we would normally adopt at an oil

1 and gas hearing.

2 But I think if Alpha wants to make an
3 argument on standing, you can either put it in your
4 pre-hearing statement or file a motion in advance about
5 that issue, and then that issue will be addressed in
6 December. And that's kind of a threshold issue,
7 obviously, make sure that Delaware is properly before
8 the Commission.

9 CHAIRWOMAN RILEY: I think that's probably
10 appropriate.

11 MR. FELDEWERT: I mean, certainly one way
12 you could proceed is if we want to address that, we
13 could tee up the, as you put it, threshold issue of
14 standing to be addressed at the December hearing and
15 focus the testimony on that particular issue. That
16 would give us some sideboards at least to -- you know,
17 what happened last time, obviously, is we had an all-day
18 hearing. Okay? We presented one witness. They
19 presented three. It took all day. But it went off on a
20 lot of different issues. Okay? So my point is -- you
21 know, I'm just alerting you that if it's wide-open, it's
22 probably going to take an entire day again. But if it
23 is focused on a particular issue that is a threshold
24 issue or of immediate concern, then we could probably
25 tailor the testimony to address that particular issue or

1 issues and thereby try to put some sideboards on where
2 we're headed and what we're doing on that particular
3 day.

4 MR. BRANCARD: And so the only other
5 question, then, is the issue of untimeliness. And I
6 don't know whether Mr. Larson is prepared at this point
7 to respond to whether Alpha would have any additional
8 evidence that's not already in the record on that issue
9 to present.

10 MR. LARSON: On that particular issue, I
11 can't think of what it would be.

12 MR. BRANCARD: Okay.

13 MR. LARSON: And I do think notice is an
14 issue that needs to be addressed. At the Division
15 hearing, there were some tangential issues involving a
16 motion for stay, a subpoena that was served by Delaware.
17 I don't think those issues are in play anymore. So I
18 don't anticipate it would be a full-day hearing. But I
19 would -- if we are going to go for a full-blown hearing,
20 I would have three witnesses addressing the issues of
21 notice and standing and timeliness.

22 MR. BRANCARD: But, I mean, I'm hearing
23 Mr. Feldewert sort of saying he's willing to drop the
24 notice issue if the issue is just untimeliness.

25 MR. FELDEWERT: Well, I guess I'm trying to

1 figure out if we have -- if it is undisputed that the
2 order was issued prematurely, in violation of the 15-day
3 rule, what remains on the issue of timeliness.

4 MR. BRANCARD: Well, that's why I asked
5 Mr. Larson whether he had any additional evidence to
6 present.

7 MR. LARSON: I don't know that it's
8 undisputed it was a violation. It's undisputed that the
9 timing was Alpha SWD submitted additional information,
10 and the order was issued 13 days later.

11 MR. BRANCARD: Okay. So then I guess the
12 issue is what's the remedy for that? Right? That's
13 what the Commission has presented. If that is the
14 violation, what is the remedy? The Commission is
15 looking for the parties to offer -- obviously,
16 Mr. Feldewert's initial motion with the Division is one
17 remedy, to completely revoke the permit that was issued
18 to Alpha. The Commission has offered a second
19 alternative, which is essentially to tick the clock back
20 to the 13-day period or whatever day, how many days it
21 is, and then restart that clock as of the date of the
22 new Commission order, would be appropriate.

23 MR. FELDEWERT: That would seem to make
24 some sense to me.

25 MR. BRANCARD: So those are two possible

1 remedies out there that I think the Commission would
2 like the parties to address.

3 COMMISSIONER BALCH: Yeah. I'd like to
4 know how we could get to that place statutorily or if
5 indeed that is the appropriate remedy. And it's a
6 little hard to unravel this, at least for me. I'm not a
7 legal person.

8 MR. FELDEWERT: Well, I mean, from my
9 perspective, you have a rule that requires a 15-day
10 waiting period, one that's issued prior to the end of
11 that 15-day waiting period. Therefore, that would mean
12 that the order is void because it was issued
13 prematurely, but there is nothing that would prevent the
14 Commission from saying, Yes, it's void, but to address
15 the clock and restart, and the Division can allow an
16 additional period for objection. And then depending
17 upon what happens during that additional period for
18 objection, it takes the appropriate action.

19 COMMISSIONER BALCH: You have a hearing at
20 the Division level --

21 MR. FELDEWERT: Correct.

22 COMMISSIONER BALCH: -- on the merits of
23 the full parties' applications.

24 MR. FELDEWERT: Correct.

25 COMMISSIONER BALCH: I think that's where

1 we want to get to.

2 CHAIRWOMAN RILEY: I think it is.

3 COMMISSIONER MARTIN: Sounds reasonable to
4 me.

5 CHAIRWOMAN RILEY: That is how we shook it
6 out last time.

7 MR. LARSON: A point of clarification, you
8 restart the clock on the Division application?

9 CHAIRWOMAN RILEY: Well, we would restart
10 the clock not completely to the beginning, but add those
11 days back in. So I think -- wouldn't that mean that
12 Delaware would have to protest because they have --

13 MR. BRANCARD: What I offered was --

14 COMMISSIONER BALCH: Argument on standing.

15 MR. LARSON: Exactly. And the pro- --
16 Delaware did not protest the application. The only
17 party entitled to notice was Matador, who did not
18 protest.

19 CHAIRWOMAN RILEY: If you -- if you add
20 those days back in, they have opportunity to protest.

21 MR. LARSON: And then we're back to the
22 issue of standing.

23 MR. FELDEWERT: Which is going to be
24 addressed at the Division level.

25 COMMISSIONER BALCH: Yeah. So the part

1 that -- as far as for me is you have the two
2 applications, one of which was clerically partially or
3 fully deleted from the system and one of which was
4 granted early. So how do argue standing from that? I
5 have no idea. But it certainly seems to me that
6 Delaware has an argument that they are involved in a
7 process for a very similar location, for a very similar
8 type of well, so, I mean, if you want to argue standing,
9 I think that would probably be the very first component.
10 So this is the part that we have to unravel, right?

11 MR. LARSON: Understood.

12 And our position all along has been the
13 application that Delaware filed in October and then
14 canceled, and so at the point in time that Alpha SWD
15 filed its application, there was not a pending Delaware
16 application. And then that's where the notice issue
17 comes back in because it's also been our position that
18 Delaware was not an affected party as defined in the
19 rules and, therefore, wasn't entitled to have notice.

20 CHAIRWOMAN RILEY: I'm not sure that
21 Delaware's was totally canceled.

22 COMMISSIONER BALCH: Partially canceled.

23 CHAIRWOMAN RILEY: Canceled or was it
24 suspended?

25 MR. LARSON: Again, we are back to the

1 Division records, which shows as of April, it was
2 canceled. At least that's our position.
3 Mr. Feldewert's position is it was suspended.

4 MR. FELDEWERT: Well, I -- let's step back.
5 We're dealing with Division records, okay, number one.

6 Number two, clearly the email that Delaware
7 got, which I put in the record, was that the application
8 was suspended while they negotiated with the objecting
9 parties, and that's how they proceed. And never were
10 they -- was it suggested to them or were they notified
11 in any fashion that anything was canceled. And how that
12 occurred clerically, whether that was a mistake and what
13 the result of that was, I don't know, but certainly
14 Delaware was never notified of that. And so it
15 proceeded as if it had standing, and the Division -- I'm
16 sorry -- as if it was suspended, and the Division
17 proceeded as if it was suspended, because we notified
18 the Division when we reached an agreement with the
19 parties and things proceeded from there. So a lot of
20 this is at the Division level. A lot of this needs to
21 be sorted out by the Division.

22 You-all can do that if you want to, but it
23 seems to me that the most appropriate avenue here is to
24 deal with the undisputed issue and the most expeditious
25 matter was to deal with the undisputed issue, and that

1 is that it was untimely granted or it was untimely
2 issued. You can easily remedy that by whatever remedy
3 you deem appropriate. Resetting the clock makes sense
4 to me, and then when there is an objection filed, then
5 we will have notice.

6 COMMISSIONER BALCH: Then figure out
7 standing.

8 MR. FELDEWERT: Then they can figure out
9 standing, sort through the records and figure out the
10 issues.

11 MR. BRANCARD: So let me just make it
12 clear, Mr. Larson. The standing issue you're raising
13 about Delaware pertains to Delaware's standing in which
14 proceeding?

15 MR. LARSON: In the Division proceeding to
16 seek the revocation of Alpha SWD's administrative order,
17 which was filed two or three months after the order was
18 issued.

19 MR. BRANCARD: So let me just throw this
20 out and the parties can react to this. So what if we
21 clarify that the issues at the rehearing about (A) the
22 standing issue that Mr. Larson has just presented, and
23 (B) sort of a, I guess, kind of almost a show cause as
24 to why the Commission should not force a remedy of
25 restarting the clock on the original application of

1 Alpha as of the date that the order was issued and the
2 amount of time left on the 15-day period as of that
3 date? So that would give the parties an ability to
4 respond to that.

5 You asked for authority. There actually is
6 a little provision in our adjudicatory procedures rule
7 which states that, under 19.15.4.12D, "Evidence of
8 failure to provide notice as this rule requires may,
9 upon proper showing, be considered cause for re-opening
10 the case." Okay? We haven't made a finding about
11 notice yet, but there is sort of -- there is an ability
12 to re-open cases if it is not properly handled according
13 to the procedures. So that's essentially what we're
14 looking at here, is re-opening the original application
15 back to the time when the original order was issued, the
16 original permit was issued, whether it's three days,
17 four days, two days, whatever. That's the time period
18 to allow for additional protests.

19 Is that my understanding of what you're
20 looking at as a remedy?

21 COMMISSIONER BALCH: I think that's where
22 we were hoping to get to.

23 CHAIRWOMAN RILEY: Yeah.

24 MR. BRANCARD: Commissioner Martin?

25 COMMISSIONER MARTIN: I agree. That's what

1 we wanted to get at. My question is: Are you speaking
2 now at the Division level or Commission level?

3 MR. BRANCARD: Well, I think this would be
4 a remand to the Division.

5 COMMISSIONER BALCH: Yeah. If we reset the
6 clock, it would go back to the Division. The Division
7 has applications to look at --

8 COMMISSIONER MARTIN: I agree.

9 COMMISSIONER BALCH: -- and they need to
10 figure out how to deal with that. And then there will
11 be remedies at the Division level for the party that
12 doesn't like the result of that.

13 COMMISSIONER MARTIN: To me that's kind of
14 putting the remedy back where it belongs, which is at
15 the Division level, since that's where mistakes are
16 heard. I agree.

17 CHAIRWOMAN RILEY: I think that makes
18 sense.

19 COMMISSIONER BALCH: The question is do we
20 have to wait until December to do that, or can we do
21 that --

22 MR. BRANCARD: No. I think we need to
23 allow the parties to respond to that.

24 COMMISSIONER BALCH: So you know what our
25 thought is on the issue, and you can make arguments for

1 or against that.

2 MR. BRANCARD: Or propose an alternative.

3 MR. LARSON: So we would be resetting the
4 clock on the Alpha SWD application before the Division?

5 COMMISSIONER BALCH: It would go back to
6 the Division for two more days or three more days or
7 whatever it is.

8 CHAIRWOMAN RILEY: It's five.

9 COMMISSIONER BALCH: Five.

10 COMMISSIONER MARTIN: Uh-huh.

11 COMMISSIONER BALCH: At which point, if the
12 party has standing, they can intervene.

13 MR. BRANCARD: File a protest -- or file a
14 request for a hearing, really.

15 COMMISSIONER BALCH: Request for a hearing.

16 MR. FELDEWERT: Makes sense to me.

17 MR. BRANCARD: You filed an application for
18 rehearing, Mr. Feldewert, so that's why I'm pointing at
19 you about any other issues.

20 MR. FELDEWERT: No. I think my initial
21 motion was premised on the idea that we really don't
22 need a Commission hearing, that there was, it seemed to
23 me -- that the facts and the regulations yielded a
24 conclusion that would result in the matter going back to
25 the Division with the appropriate remedy. And I think

1 what you've laid out makes total sense to me. I mean,
2 clearly Delaware's going to file a protest if they're
3 afforded an opportunity to do that because now we know
4 about it, and then the matter can proceed at the
5 Division level consistent with the procedures available
6 for a protest.

7 COMMISSIONER BALCH: I have a procedural
8 question, Mr. Brancard.

9 MR. BRANCARD: Sure.

10 CHAIRWOMAN RILEY: Yes.

11 COMMISSIONER BALCH: So in December --
12 essentially, this Commission will be dissolved one way
13 or another in January. If there is an order that will
14 come out of that December hearing, do we need to have
15 that prepared and filed by the end of the month or
16 before inauguration is in January?

17 MR. BRANCARD: Well, we have an order in
18 this case. Okay? So upon rehearing, the normal process
19 is -- we rarely do rehearings; it's hard to call it
20 normal. But I would assume the process is to replace
21 that order with a new order. Okay? So much of that
22 order has a whole series of factual findings in it, et
23 cetera, to be maintained. Some stuff will probably get
24 dropped out, and then other stuff will be added in. So
25 we have sort of a framework to work, which is the

1 initial Commission order.

2 COMMISSIONER BALCH: I suppose what I'm
3 asking is if we should ask the --

4 CHAIRWOMAN RILEY: Timing?

5 COMMISSIONER BALCH: -- parties to bring
6 proposed orders to the hearing.

7 MR. BRANCARD: That could be -- we could
8 request the parties to bring -- offer proposed findings
9 and conclusions.

10 CHAIRWOMAN RILEY: Because otherwise when
11 will we get together to sign it?

12 Is that what you're concerned about?

13 COMMISSIONER BALCH: Yeah.

14 When do we officially turn over to the next
15 administration?

16 MR. BRANCARD: Midnight, December 31.

17 CHAIRWOMAN RILEY: New Year's Eve. Let's
18 have a party.

19 COMMISSIONER BALCH: So we would have to
20 sign the order before that date, or we would have to go
21 through all this again, perhaps, with another
22 Commission.

23 MR. BRANCARD: There are various ways to do
24 this. You could have a special meeting to do it. You
25 can delegate it to the Chair, but I think I would want

1 the Commissioners to review the draft order anyway.

2 COMMISSIONER BALCH: It's not an issue to
3 do that, I think, by December 31st. It's just a matter
4 of getting it between December 13th and then to the
5 point of readiness, whatever that resolution is.

6 MR. BRANCARD: We will likely have other
7 orders coming out of the December 13th hearings.

8 I believe, Mr. Feldewert, you have some
9 other cases.

10 MR. FELDEWERT: Yeah. Yeah. I'm not sure
11 what your docket looks like, but yeah.

12 MR. BRANCARD: So if those go forward --

13 MR. FELDEWERT: So are you still
14 contemplating the actual factual -- are you still
15 contemplating an evidentiary hearing in December?

16 MR. BRANCARD: You know, I think that's up
17 to the parties. We've given you what the issues are,
18 and you have the option of how to deal with it. I mean,
19 it seems to me that much of this can be done through
20 argument of counsel, but if there is additional evidence
21 that the parties want to put in the record -- because
22 the record has a fair amount of documents right now
23 covering a lot of these issues, issues like standing.
24 Maybe we want the parties to file a memorandum on that
25 issue in advance. Would that be a better way of trying

1 to address the issue like standing?

2 MR. FELDEWERT: Well, if you're going to
3 address the issue of standing at your December hearing,
4 my assumption would be there's going to be -- there
5 would be facts or evidence that would be presented that
6 would address the issue of standing. I guess the
7 question I've got is if the standing is at the Division
8 level, then isn't that a matter that the Division would
9 address?

10 COMMISSIONER MARTIN: That's what I'm
11 saying.

12 COMMISSIONER BALCH: Yeah. I think
13 standing is the cart before the horse.

14 MR. BRANCARD: Well, okay. So there are
15 two standing issues here. One is -- say we send this
16 case back to the Division and Delaware files a request
17 for a hearing. Do they have standing to do so? Right?
18 That's an issue. The issue before us is whether
19 Delaware has standing to even be here as a party.

20 And so I think the issue that you're
21 raising, Mr. Larson, is if they didn't have standing to
22 raise the case in front of the Division, they don't
23 really have standing to be here either; is that correct?

24 MR. LARSON: That's correct.

25 MR. BRANCARD: So it's standing before us

1 whether Delaware is really even --

2 COMMISSIONER BALCH: The Commission does
3 have some ability to grant standing also.

4 MR. BRANCARD: Uh-huh. It does.

5 COMMISSIONER BALCH: So that might be
6 something for us to discuss in closed session if you
7 want to talk about it before December, but --

8 MR. BRANCARD: Well, we don't really have
9 the arguments of the parties before us.

10 So perhaps we should -- here's another --
11 perhaps we should offer Alpha the opportunity to file a
12 motion on this matter and Delaware the opportunity to
13 respond in advance of the hearing.

14 MR. FELDEWERT: You certainly could do
15 that. I'm not sure you have to, but you could.

16 MR. BRANCARD: As a way of trying to move
17 the issue forward before we get to the hearing.

18 MR. LARSON: I think we can go one of two
19 ways: file a motion or do a legal memorandum and do
20 argument at the December 13 hearing.

21 MR. BRANCARD: Well, yeah. I would assume
22 your motion would have some support behind it.

23 MR. LARSON: I would certainly hope so.

24 MR. FELDEWERT: I mean, I guess my thought
25 would be there is enough in the record to substantiate

1 standing for purposes of raising this issue or the
2 timeliness of the issuance of the order, but if you feel
3 like you need to address that issue at the Commission
4 level, that's obviously your prerogative.

5 MR. BRANCARD: So we have two months until
6 December. How much time would you need, Mr. Larson, to
7 prepare a motion?

8 MR. LARSON: Around Thanksgiving, maybe.

9 MR. BRANCARD: Well, I'm trying to give
10 enough time for a response and a reply, so --

11 MR. LARSON: In November, for the motion.

12 MR. BRANCARD: Yes. How about if we do 30
13 days from now for a motion and then 15 days to respond?

14 MR. FELDEWERT: Now, is that going to put
15 me right in the middle of Thanksgiving week?

16 MR. BRANCARD: Yeah. Yeah.

17 MR. FELDEWERT: That's very clever on
18 Mr. Larson's part.

19 (Laughter.)

20 MR. LARSON: I'm thinking of my schedule
21 between now and then, and I understand that that's not
22 fair to Mr. Feldewert.

23 MR. BRANCARD: How do we avoid that?

24 COMMISSIONER BALCH: You get to charge your
25 clients time and a half for a holiday.

1 (Laughter.)

2 MR. LARSON: Yeah. I could certainly agree
3 to a shortened time for a reply.

4 MR. BRANCARD: Well, it is now October
5 11th. Can you get a motion to us by November 5th?

6 MR. LARSON: Yes.

7 MR. BRANCARD: And then, Mr. Feldewert, can
8 you give a response by November 20th, or are you
9 planning to be off that whole week?

10 MR. FELDEWERT: Well, I can get you -- I
11 might file it a little early, but yeah. I can get -- if
12 I get it on the 5th, that gives me two weeks before I
13 plan on having to -- that should be fine. Yeah.

14 COMMISSIONER BALCH: So standing first and
15 then argument on the pros and cons of resetting the
16 clock.

17 MR. BRANCARD: Right, assuming you find
18 that Mr. Feldewert's client has standing. You have to
19 decide that first.

20 COMMISSIONER BALCH: But they have to be
21 prepared for that in any case?

22 MR. BRANCARD: Right.

23 MR. LARSON: And I don't disagree with
24 Mr. Feldewert that that issue of standing may involve
25 some testimony. I suppose we could address it through

1 an affidavit.

2 Did I understand that correctly, Mike?

3 MR. FELDEWERT: Well, I'm not sure. I
4 mean, I'm assuming -- I'm not sure what you're going to
5 raise. I mean, I guess we would, you know, have a
6 number of points to make on the standing side, right,
7 including the fact that we asked them to tell us before
8 they filed their application, which would be a factual
9 point from a witness?

10 MR. LARSON: So do we really skin that cat
11 with a motion if there needs to be testimony --

12 MR. BRANCARD: Well, I think the motion
13 will -- will provide you with an opportunity to set out
14 the issue as you see it and provide Alpha with notice of
15 what the issue is in advance of the hearing. So if
16 there needs to be additional testimony at the hearing --

17 MR. FELDEWERT: And at least allow the
18 testimony to be more tightly tailored.

19 MR. BRANCARD: Correct.

20 MR. FELDEWERT: That's fine.

21 So November 5th, their brief, and November
22 20th for our response. Is that what you have?

23 MR. BRANCARD: That's what I have.

24 December 3rd for a reply?

25 MR. LARSON: Sure.

1 CHAIRWOMAN RILEY: So then do we need to
2 try to get on the calendar another day in December after
3 the 13th to review any orders?

4 MR. BRANCARD: Yeah. I mean, you may just
5 want to set up a special meeting, start looking at
6 dates. I mean, I don't even know -- you might even be
7 able to do it by teleconference.

8 CHAIRWOMAN RILEY: Can we do that with open
9 meetings?

10 COMMISSIONER BALCH: I've got no problems
11 coming up to Santa Fe.

12 MR. BRANCARD: Okay.

13 CHAIRWOMAN RILEY: That next week, I'll be
14 here for sure. The following week is Christmas weekend.
15 I'm not sure I will be here that week.

16 MR. BRANCARD: Yeah. You may just want to
17 sort of think about this going forward.

18 COMMISSIONER BALCH: The 31st is actually a
19 Monday, so -- that's New Year's Eve. Technically, since
20 I work at a university, I'm off between the 20th and the
21 2nd. I can come in.

22 COMMISSIONER MARTIN: I'll come in, too,
23 but I'm off that period of time, also.

24 COMMISSIONER BALCH: But anytime the week
25 of the 17th should be all right.

1 CHAIRWOMAN RILEY: How about the 19th?

2 COMMISSIONER MARTIN: Why can't we do one
3 before the 13th just for that one issue?

4 MR. BRANCARD: But I think what the Chair
5 has raised is that there will be orders coming out of
6 the December 13th meeting that the Commission needs
7 to --

8 COMMISSIONER BALCH: That will need to be
9 addressed by the end of the month.

10 CHAIRWOMAN RILEY: That we need to sign.

11 Is that enough time, between the 13th and
12 the 19th, to get all the orders out that are going to be
13 coming out of that 13th hearing date?

14 MR. BRANCARD: I guess it depends on how
15 many hearings we have.

16 CHAIRWOMAN RILEY: Well, we are well
17 represented this morning by counsel who might possibly
18 have orders to prepare.

19 COMMISSIONER BALCH: Maybe later in that
20 week, the 20th or the 21st, would be a little better. I
21 don't know if moving it into the next week does any good
22 because of Christmas.

23 CHAIRWOMAN RILEY: Yeah.

24 COMMISSIONER BALCH: It doesn't probably
25 provide any additional work time.

1 MR. FELDEWERT: I think your larger docket
2 is going to be the November docket, just based on what I
3 know.

4 MR. BRANCARD: Well, that's Hilcorp.

5 MR. FELDEWERT: Right, and a couple of
6 other matters.

7 COMMISSIONER BALCH: Hilcorp has its own
8 hearing.

9 MR. BRANCARD: Adam has a case in December.

10 MR. RANKIN: Yeah. I think that'll --

11 MR. FELDEWERT: You have a case in
12 December?

13 MR. RANKIN: Yes. It may be two or three
14 hours.

15 COMMISSIONER BALCH: Have you been paying
16 attention that you may want to come with an order in
17 your back pocket?

18 MR. BRANCARD: That's the AGI case?

19 MR. RANKIN: Uh-huh.

20 MR. BRANCARD: And then we have the two
21 competing applications case. I forget who that is. Two
22 operators propose to --

23 COMMISSIONER BALCH: Opposite ends of the
24 lease.

25 MR. BRANCARD: Yeah, on the 320.

1 CHAIRWOMAN RILEY: So what about carrying
2 that hearing date to the 14th and us just letting
3 everybody know that we're going to review their orders
4 on the 14th and sign on the 14th?

5 COMMISSIONER BALCH: Let's see. What is
6 the 13th?

7 CHAIRWOMAN RILEY: It's a Thursday.

8 MR. BRANCARD: Well, I think it would be
9 good for the Commission just to -- if you could sort of
10 tentatively set aside a date like the 21st.

11 COMMISSIONER BALCH: Just to sign orders.
12 I certainly have time the week of the 17th and even
13 earlier in the week of the Commission hearing on the
14 13th, if you want to move it up a couple of days to give
15 more people time to respond before the 20th or the 21st.

16 Does that mess up the schedule too much if
17 we move that December date?

18 MR. BRANCARD: I don't think we have any
19 rulemakings. No, we don't have any rulemakings. Those
20 are the ones that are usually very sensitive to time
21 changes because of the advance notice. The adjudicatory
22 cases are less so. But I know in some of the cases, you
23 know, we've already sort of confirmed with the parties
24 that that's the date. So --

25 MR. RANKIN: I think it's -- we can move --

1 I mean, if it needs to be a different date for Salt
2 Creek, we can work within in -- whatever works.

3 COMMISSIONER BALCH: Thinking more like the
4 11th instead of the 13th. That would give us a couple
5 more days, make sure we get through everything.

6 MR. BRANCARD: Well, I think the 13th and
7 14th should do it.

8 COMMISSIONER BALCH: Sounds good. I mean,
9 I can continue to the 17th, too.

10 MR. BRANCARD: No. There's always next
11 year.

12 COMMISSIONER BALCH: All right. If you
13 think it's enough, that's fine. I was thinking more
14 along the lines that it gives people a couple more days
15 to get orders ready.

16 MR. BRANCARD: That's true.

17 CHAIRWOMAN RILEY: Is there anything else
18 on this we need to talk about?

19 MR. BRANCARD: Anything else from the
20 parties?

21 MR. LARSON: Nothing. Just to clarify, I'm
22 going to file a motion on the standing issue on November
23 5th, and then we have a briefing schedule after that.
24 And then the other issue for hearing on December 13th
25 will be what is the appropriate remedy for the alleged

1 violation of the 15-day rule?

2 MR. BRANCARD: With specific response to
3 the proposal that the Commission has --

4 MR. LARSON: Which is resetting the clock
5 and letting the Division deal with the issue?

6 COMMISSIONER BALCH: Yeah.

7 MR. BRANCARD: Yes.

8 CHAIRWOMAN RILEY: Anything else?

9 MR. FELDEWERT: No.

10 Thank you for your time.

11 MR. LARSON: No.

12 Thank you.

13 (Case Number 15855 concludes, 9:48 a.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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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 6th day of November 2018.

21

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23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
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