

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 (Rehearing)
SWD NO. 1 WELL OPERATED BY ALPHA SWD
OPERATING, LLC, EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

January 17, 2019

Santa Fe, New Mexico

BEFORE: DAVID GABRIEL WADE, ACTING CHAIRPERSON
ALLISON MARKS, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
January 17, 2019, 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

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APPEARANCES

FOR APPLICANT 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

FOR DE NOVO APPLICANT ALPHA SWD OPERATING, LLC:

GARY W. LARSON, ESQ.
HINKLE SHANOR, LLP
218 Montezuma Avenue
Santa Fe, New Mexico 87501
(505) 982-4554
glarson@hinklelawfirm.com

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EXHIBITS OFFERED AND ADMITTED

(No Exhibits.)

1 (9:07 a.m.)

2 ACTING CHAIRMAN WADE: Item five on the
3 agenda is the rehearing of Case Number 15855, de novo,
4 which is the application of Delaware Energy, LLC to
5 revoke the injection authority granted under SWD-1680
6 for the Alpha SWD No. 1 well operated by Alpha SWD, LLC,
7 Eddy County, New Mexico.

8 Call for the parties' appearances, please.

9 MR. FELDEWERT: May it please the Board --
10 Commission, Michael Feldewert with the Santa Fe office
11 of Holland & Hart, appearing on behalf of the Applicant,
12 Delaware Energy, LLC.

13 MR. LARSON: Good morning, Mr. Chairman,
14 Commissioner Marks.

15 Gary Larson, with the Santa Fe office of
16 Hinkle Shanor, for the de novo Applicant, Alpha SWD
17 Operating.

18 ACTING CHAIRMAN WADE: Okay. Now, I have a
19 proposal, Commissioner Marks. I've reviewed the record.
20 I reviewed the pleadings. I feel like I have enough
21 basic information. What I would propose is that we let
22 Mr. Brancard discuss the procedural history and then
23 perhaps go into executive session immediately to begin
24 discussions. If there is any further argument we'd like
25 to hear from the parties, we could come back into open

1 session to do that. If you have any other proposal, I'm
2 open to hearing it.

3 COMMISSIONER MARKS: No. I would -- if
4 that's the motion, I second the motion.

5 ACTING CHAIRMAN WADE: Okay.

6 Mr. Brancard, if you would --

7 Well, all in favor of that proposal say
8 aye?

9 MR. BRANCARD: Wait until the point you
10 want to go into executive session, then make the formal
11 motion. At this point you need to decide what you want
12 to talk about.

13 ACTING CHAIRMAN WADE: Okay. Well,
14 Mr. Brancard, if you would give us kind of a procedural
15 background to this case, please.

16 MR. BRANCARD: Okay. Thank you,
17 Mr. Chairman.

18 I had sent to the Commissioners the order
19 of the Commission, R-14484-B, which was the actual order
20 that has now been suspended by the Commission after the
21 proceedings in this case last year. And, you know, what
22 I would summarize is essentially what is in the first, I
23 believe, eight findings in that order, and that is that
24 this case began with an application by Alpha for a solid
25 waste disposal well. That was granted by the Division.

1 Delaware, sometime after the granting of that permit,
2 filed a motion to revoke injection authority with the
3 Division, two grounds that they raised, and requested a
4 hearing before the Division hearing examiner.

5 The Division hearing examiner held a
6 hearing on that case and then granted Delaware's motion
7 to revoke injection authority based on one of their
8 claims, which was that the initial grant of the SWD
9 permit by the Division to Alpha violated the rules by
10 being granted prior to the expiration of a second 15-day
11 period in our rules. Our injection rules have two
12 15-day periods in them.

13 Let me explain. The first one is the
14 Applicant files a public notice and gives an opportunity
15 to respond, and there is a 15-day period to respond to
16 that notice. However, our rules also say that the
17 Division cannot actually grant the permit until 15 days
18 after the application is complete. So in this case, the
19 first 15-day period ran. The Division had asked Alpha
20 to provide more information. When that was finally
21 submitted, that's when the application was complete.
22 That's when the second 15-day clock began, and the
23 Division granted that permit prior to the end of that
24 15-day clock.

25 So in the second Division proceeding, which

1 is on the motion to revoke injection authority, the
2 hearing examiner granted that motion on the basis that
3 the first permit was not issued according to the
4 regulations.

5 Alpha then sought de novo review with the
6 Commission. The Commission had a series of proceedings
7 in this case to get the facts in front of them and to
8 try to deal with legal or procedural issues.

9 The Commission on its own, basically at my
10 urging, raised the question about whether it was proper
11 for Alpha -- sorry -- for Delaware to invoke the
12 authority of the Division hearing examiner to revoke the
13 injection authority. Essentially what Delaware was
14 doing was appealing the decision -- the first decision
15 of the Division to the Division itself and asking the
16 Division to revoke and repeal its own decision. And so
17 initially the Commission reached the decision that that
18 was not proper, that what Delaware should have done was
19 either appeal the initial decision to the Commission or,
20 if that was not available, to appeal the decision to the
21 courts, that the Division didn't have the authority to
22 hold that second -- that second proceeding on this
23 permit.

24 There was a request for rehearing after
25 that decision. In the rehearing proceeding, the

1 Commission sort of took a broader look at the case and
2 looked at the statute. And that's -- in the order for
3 rehearing, you'll see the statutory provision. It's
4 simply one sentence that creates the Commission's role
5 under the Oil and Gas Act, and it says, "When any matter
6 or proceeding is referred to an examiner and a decision
7 is rendered thereon, any party of record adversely
8 affected shall have the right to have the matter heard
9 de novo before the Commission upon application filed
10 within 30 days after the decision."

11 So in this case, the Commission looked at
12 that and said, Well, the matter or proceeding that went
13 to the Division hearing examiner was the initial grant
14 by the Division. And so it is that matter that is
15 actually before the Commission. So the Commission has
16 the ability to simply -- now that it has the case and
17 has properly brought the case as a de novo proceeding,
18 the Commission can look at it and seek to try to remedy
19 the problem created by the first Division action on the
20 SWD permit. And so that was what the Commission last
21 year was looking at and why they granted the rehearing.

22 We have a new Commission, fresh eyes. You
23 obviously can look at this however you'd like to. The
24 initial Commission order has been suspended, but it's
25 still there. And so I think the facts in the case are

1 fairly simple in that regard of what had happened.
2 That's why I urged the Commissioners to look at the
3 first eight findings in this case because it just simply
4 lays out the case. There is a separate issue that has
5 been raised by Alpha about the standing of Delaware in
6 this matter, and so that has also been briefed before
7 the Commission. And what the last Commission wanted to
8 look at, if it went back to the first decision about
9 granting the SWD to Alpha, would be if they decided to
10 reverse that decision, what would be the proper remedy,
11 which the Commission had asked the parties on several
12 occasions but didn't get anything other than I win, you
13 lose as solutions suggested by either party. And so I
14 think the Commission was looking at something different
15 in terms of a remedy to try to put the parties in
16 positions with each other with their competing
17 applications. But only one application is in front of
18 you and that is Alpha's. There is a second application
19 by Delaware, but it's not in front of the Commission.
20 So that's where we're at procedurally, how we got here,
21 much too complicated for a very simple SWD permit
22 application.

23 ACTING CHAIRMAN WADE: And it's been
24 pending for quite a while.

25 Commissioner Marks, do you have any

1 questions for Mr. Brancard or the parties at this time?

2 COMMISSIONER MARKS: I do not.

3 ACTING CHAIRMAN WADE: I would move that we
4 go -- move into executive session to discuss this issue.

5 COMMISSIONER MARKS: I would second the
6 motion.

7 ACTING CHAIRMAN WADE: All those in favor
8 say aye?

9 COMMISSIONER MARKS: Aye.

10 ACTING CHAIRMAN WADE: Aye.

11 (Ayes are unanimous.)

12 MR. BRANCARD: So the Commission is going
13 under the section of the Open Meetings Act which allows
14 for deliberation of administrative and adjudicatory
15 matters in executive session.

16 (Recess, Executive Session, 9:15 a.m. to
17 10:16 a.m.)

18 ACTING CHAIRMAN WADE: We're back on the
19 record.

20 MR. BRANCARD: You need a motion to go back
21 into open session.

22 COMMISSIONER MARKS: I'd make a motion to
23 go back into open session.

24 ACTING CHAIRMAN WADE: I second.

25 All those in favor?

1 COMMISSIONER MARKS: Aye.

2 ACTING CHAIRMAN WADE: Aye.

3 (Ayes are unanimous.)

4 MR. BRANCARD: And a statement from the
5 Chair that the only thing discussed in executive session
6 was Case 15855.

7 ACTING CHAIRMAN WADE: The only thing
8 discussed in executive session was Case Number 15855.

9 So the Commission has reviewed the record
10 and the pleadings in this case, and based on this
11 Commission's review, we find that Order R-14484-B was
12 supported by the record and that the granting of the
13 rehearing of SWD-1680, under Order Number 14484-D, was
14 improper. Based on the Commission review and
15 discussion, I move that Order Number 14484-D be quashed
16 and Order R-14484-B be reinstated.

17 Do I hear a second?

18 COMMISSIONER MARKS: I second the motion.

19 ACTING CHAIRMAN WADE: All those in favor?

20 COMMISSIONER MARKS: Aye.

21 ACTING CHAIRMAN WADE: Aye.

22 (Ayes are unanimous.)

23 ACTING CHAIRMAN WADE: The motion carries.
24 Order Number R-14484-D is quashed, and Order R-14484-B
25 is reinstated.

1 That brings us to item 31 on the agenda,
2 which is pending litigation.

3 MR. FELDEWERT: Madam Chair, members of the
4 Commission, may I have -- Michael Feldewert, attorney
5 for the Applicant, Delaware Energy. I'd like to make a
6 request in light of the Division's ruling -- or
7 Commission's ruling.

8 ACTING CHAIRMAN WADE: Go ahead.

9 MR. FELDEWERT: In light of the
10 Commission's ruling that 14484-B is now reinstated, I
11 would ask that the Commission stay Order --
12 Administrative Order SWD-1680, as it did under Case
13 Number 14484-C, for purposes of filing an appeal in the
14 district court of Santa Fe County and ask that the stay
15 be extended for the pendency of the appeal before the
16 district court.

17 ACTING CHAIRMAN WADE: So for my benefit,
18 please, can you repeat your whole request and I'll do
19 better on following at this time.

20 MR. FELDEWERT: I would ask for the relief
21 that has been afforded previously by the Commission
22 under Case Number R -- or under Order Number R-14484-C
23 on the grounds that are stated in that order, for the
24 reasons stated in the order, which is essentially then,
25 effective Order R-14484-B is to stay the administrative

1 order for a period of 60 days, and if an appeal is then
2 filed within that 60-day period to the district court,
3 that the stay be extended for the pendency of the appeal
4 before the district court.

5 ACTING CHAIRMAN WADE: Mr. Brancard, do you
6 know if 14484-C was ruled on by the Commission?

7 MR. BRANCARD: Yes. It was -- it was after
8 the order in the case was issued but prior to the
9 rehearing being considered. Is that correct?

10 MR. FELDEWERT: Yes. It was after the time
11 R-14484-B was issued. There were arguments on whether a
12 stay should be issued, and the Commission at that time,
13 all three members, voted to grant the stay under the
14 terms and conditions of R-14484-C. So if we're going to
15 go back to R-14484 --

16 MR. BRANCARD: B.

17 MR. FELDEWERT: -- B, we would ask that we
18 likewise we go back to R-14484-C.

19 ACTING CHAIRMAN WADE: Mr. Larson?

20 MR. LARSON: If I recall, that had a 60-day
21 time limit. I don't know that we could go back to that
22 order. I think there would have to be a new order
23 issued.

24 And Alpha's position is we don't have a
25 problem with a stay through a rehearing period in front

1 of the Commission, but it would be our position that
2 Delaware should have to go to the district court to get
3 a stay from the district court if it does file an
4 appeal, which would potentially involve a bond, because
5 Alpha's injection authority has been on hold for almost
6 a year and a half now, and they've had substantial
7 financial injury in the meantime. They purchased the
8 property where the well will be located, and throughout
9 this period, Delaware really hasn't had any skin in the
10 game. So my counterproposal would be a stay through the
11 end of the rehearing period and not for the period of a
12 district court appeal.

13 MR. FELDEWERT: Stays on these types of
14 orders are addressed by the Commission per statute and
15 the rule, not the district court.

16 COMMISSIONER MARKS: And how long would it
17 take for the -- just causationwise for the district
18 court to rule on a stay?

19 MR. BRANCARD: Well, I think procedurally
20 we're now done with the rehearing period. So the next
21 step, if there is a next step, would be an appeal to
22 district court.

23 MR. FELDEWERT: Right. I would think
24 that's what would happen.

25 MR. BRANCARD: There'll be a 30-day period

1 for that.

2 MR. FELDEWERT: Be a 30-day period for
3 that. So I don't know what triggers that 30-day period.
4 Is the 30-day period -- is there going to be a written
5 decision here that would then trigger that 30-day
6 period, or are you contemplating just relying upon --

7 MR. BRANCARD: We can draft a quick order
8 that expresses what the Chair said in his motion, a few
9 lines.

10 COMMISSIONER MARKS: So we're saying 30
11 days -- there will be 30 days for the district court in
12 Santa Fe to rule on a motion for rehearing?

13 MR. BRANCARD: Well, I think once the
14 Commission issues that written order, there would then
15 be 30 days to appeal it.

16 COMMISSIONER MARKS: And then --

17 MR. BRANCARD: And then whatever period to
18 request a stay from the district court, if we go with
19 Mr. Larson's proposal here. I mean, under the -- under
20 the -- under the rules, if you want a stay in district
21 court, you first have to ask the agency, which is what
22 Delaware is doing right now.

23 MR. FELDEWERT: Exactly. I mean, I'm
24 required to ask the -- ask the Commission address the
25 appropriateness of the stay in a Commission order.

1 COMMISSIONER MARKS: I just heard -- I just
2 heard Mr. Feldewert say for the duration of the appeal
3 process versus the district court determining whether
4 there should be a stay. And I would be inclined to say
5 until the district court determines whether there should
6 be a stay versus the entire litigation in district
7 court. Does that make sense?

8 ACTING CHAIRMAN WADE: It does.

9 COMMISSIONER MARKS: Yes.

10 So if Delaware were to file a request for a
11 stay in district court and that stay is denied, then
12 Alpha could go ahead and drill the well. If the stay is
13 granted, I would say it's at the discretion of the
14 district court but not during the entire appeal process.

15 MR. BRANCARD: Okay. So here's one. If we
16 want to go that direction -- sort of in line with
17 Mr. Larson's proposal -- the Commission can grant a
18 stay, as it did before, for 60 days. If, during that
19 60-day period, there is an appeal filed and there is a
20 motion for stay filed in the district court, then it
21 would be extended until the district court acts on that
22 stay motion.

23 COMMISSIONER MARKS: Yes. I would feel
24 comfortable with that.

25 MR. FELDEWERT: My understanding -- the way

1 this has always worked in the past, by the regulations
2 and the statute, is that the Commission grants the stay
3 of their order, and then if the party appealing to
4 district court seeks to have that stay lifted, then they
5 request that the district court lift that stay. But
6 because the Commission is familiar with its process with
7 the issues and with its expertise, it is the Commission
8 that initially decides the stay. And on the appeal, if
9 the other party wants to have the stay lifted, it
10 requests that the district court lift the stay. But it
11 is the Commission that has to stay their own order.

12 ACTING CHAIRMAN WADE: I would propose that
13 we go with Mr. Brancard's suggestion. It makes sense to
14 me that we stay -- once the order is drafted and issued,
15 that there is a 60-day stay, and that would allow
16 Delaware the opportunity to appeal. That would allow
17 Delaware the opportunity to file for a motion to stay
18 within the district court. And pending that decision,
19 once we get more information about where that decision
20 is, then that request could be extended through the
21 Commission. Does that summarize it roughly?

22 MR. BRANCARD: Well, I think we've got --
23 so we don't have the parties coming back to us, we sort
24 of made it clear what the time frame was right now.

25 COMMISSIONER MARKS: Mr. Feldewert, was

1 there anything in statute that you can point me to?

2 MR. FELDEWERT: You know, I'd have to go
3 back and look at the briefings. I'm looking now. But
4 I'm looking at --

5 MR. BRANCARD: Have to look at Rule 74?

6 MR. FELDEWERT: I'm looking at 19.15.4.23.
7 I mean, one way you could do would be to stay it in
8 place until the district court addresses the issue of a
9 stay.

10 COMMISSIONER MARKS: I mean, the only issue
11 there is it will sit there for two years, right?

12 MR. FELDEWERT: What's that?

13 COMMISSIONER MARKS: It would be sitting
14 there for -- well, go ahead.

15 MR. FELDEWERT: It's on appeal.

16 COMMISSIONER MARKS: Right.

17 MR. FELDEWERT: I don't have Rule 74 in
18 front of me.

19 I mean, one way you could do it, like I
20 said, is you could have the stay in effect until the
21 district court addresses the issue of the stay.

22 ACTING CHAIRMAN WADE: This is what happens
23 when you have five attorneys in the room. I mean --

24 MR. FELDEWERT: I mean, first off, that's
25 if the prior Commission, I'm assuming, followed the

1 proper procedure. I think you have to assume that when
2 they issued Order R-14484-C.

3 COMMISSIONER MARKS: I have 19.15.4.23 on
4 stays, but I don't see anything -- if we can give a bit
5 of latitude there.

6 So, Mr. Brancard, could you repeat?

7 MR. BRANCARD: Well, the options are
8 Delaware's option, which is to grant a period for 60
9 days, and if there is appeal, that the stay continues
10 for the pendency of the appeal in district court, which
11 is what the Commission did previously.

12 The flip-side option would be to grant the
13 stay for 60 days, and if, during that time, there is a
14 request to extend the stay in the district court, that
15 the stay is continued until the district court acts on
16 that request to extend the stay.

17 The third option, which is to grant the
18 stay until such time as the district court acts on it,
19 sort of putting the burden on, I would think, Alpha to
20 file a motion with the district court to revoke the stay
21 or --

22 MR. LARSON: Like Mr. Feldewert, I don't
23 have Rule 74 in front of me. I know that it does
24 contemplate a party filing an appeal, posting a bond
25 procedurally. I guess, Mr. Brancard, under your third

1 option, the Commission stay would remain in effect until
2 such time as the district court rules on it. I don't
3 know that I would have the opportunity to file a motion
4 to lift the stay, which I assume Mr. Feldewert would
5 counter with his own motion for stay. So it's just a
6 matter of what would trigger the process at the district
7 court level. I'm just not sure about that.

8 MR. BRANCARD: Right.

9 COMMISSIONER MARKS: Do you guys want to
10 take a break to look at Rule -- get Rule 74? I think
11 it's option -- to me, at least, I feel more comfortable
12 with option two or three. And if you want to make some
13 arguments whether it's option two or three based on
14 obtaining the rule on the stay, I'd be interested in
15 hearing argument.

16 MR. BRANCARD: Yeah. I'm looking at Rule
17 74 -- 74Q. I mean, it simply says, "The district court
18 may stay enforcement of the order of the agency that's
19 on review." And then it talks about what the contents
20 of that motion is and, when you file the motion, what
21 you have to show to the Court. And then it says, "As a
22 condition of granting a stay, the district court may
23 require the posting of a bond or other appropriate
24 surety," which we don't have the authority to do that.
25 So that's one of the differences between our stay and

1 the district court's stay, as Mr. Larson has pointed
2 out.

3 MR. LARSON: So I guess one question I
4 have -- Mr. Feldewert is discussing staying
5 Administrative Order SWD-1680, but actually I think what
6 you'd be staying is your Order R-14484-B, which
7 reinstates Alpha's injection authority. So the appeal
8 would be of your order reinstating the injection
9 authority.

10 MR. BRANCARD: I think that's fine. We can
11 do it that way, too.

12 MR. FELDEWERT: I think that's right, Gary.

13 MR. LARSON: Yeah. Which doesn't really
14 answer the question: What would be the triggering event
15 in the district court for the Court to rule on a stay?
16 I guess --

17 MR. FELDEWERT: Well, you'd have an order
18 that goes up to the district court that reinstates
19 R-14484-B and then stays that order while it's pending
20 appeal. So if you want to, you could bring the issue up
21 to the district court judge. And then if there is no
22 appeal filed within a period of whatever appropriate
23 would be, 30 or 60 days, then the stay goes away.

24 MR. BRANCARD: Right.

25 MR. LARSON: Yeah. The stay would dissolve

1 if no appeal is filed.

2 MR. FELDEWERT: Yes.

3 MR. BRANCARD: That's right. That's right.

4 MR. FELDEWERT: That's right.

5 MR. BRANCARD: That's why we have to have a
6 time frame.

7 MR. FELDEWERT: I agree. I totally agree
8 with that.

9 MR. LARSON: I just think we can't leave it
10 open-ended like we did the last time because it could
11 sit in district court for a year to two years with no
12 resolution.

13 MR. BRANCARD: Or given the Commission's
14 experience, longer.

15 COMMISSIONER MARKS: Right.

16 MR. LARSON: I'm being conservative.

17 MR. FELDEWERT: I think the appeal issue
18 may. I mean, you certainly would be able to get a
19 decision from a district court judge if you want to try
20 to lift the stay.

21 ACTING CHAIRMAN WADE: I don't see a
22 problem with making the parties come back to the
23 Commission. I think the most simple way to address it
24 is a stay for 60 days. If you want to extend that stay,
25 come back before the Commission and request that the

1 stay be extended.

2 MR. BRANCARD: Or you file an appeal and
3 you file a motion with the district court.

4 COMMISSIONER MARKS: Right. I prefer
5 everything -- the 60 days and everything is up to the
6 district court then.

7 ACTING CHAIRMAN WADE: So then it would
8 just be a stay for 60 days, period.

9 COMMISSIONER MARKS: Does that -- does that
10 make sense?

11 Would you feel comfortable with that,
12 Mr. Feldewert?

13 MR. FELDEWERT: Well, I mean, I think you
14 will have ruled on the stay.

15 COMMISSIONER MARKS: Uh-huh.

16 MR. FELDEWERT: I mean, I can only go by
17 what I've seen before, and I think it's the Commission
18 that has the expertise and the knowledge to rule on a
19 stay. And I guess in some sense, you are ruling on
20 that.

21 COMMISSIONER MARKS: Right. I'm in favor
22 of granting the stay and due process. Given the
23 adjudicatory rules in 19.15.4.23B, I think granting the
24 stay here is appropriate, and it gives you the
25 opportunity to appeal to the district court. I don't

1 want them coming back to the Commission here on any stay
2 issues, and I think it's best handled in district court,
3 if you do appeal to district court. So if 60 days is --
4 wording-wise. I just want to make sure wording-wise we
5 are --

6 MR. BRANCARD: That's fine. I mean, you
7 create the potential for a gap when the district court
8 has not ruled on a stayed motion.

9 COMMISSIONER MARKS: So it's 60 days or
10 until the district court acts on the motion to stay?

11 MR. FELDEWERT: I think that makes the most
12 sense.

13 MR. LARSON: I think there needs to be a
14 requirement for Delaware to file a motion for stay in --

15 MR. BRANCARD: For it to go beyond 60 days.

16 COMMISSIONER MARKS: So 60 days or until
17 the district court acts on the motion to stay, provided,
18 however, Delaware must file a motion to stay within 60
19 days from the issuance of a Commission order.

20 MR. BRANCARD: 60 days and if an appellant
21 files -- if there is an appeal and if there is a motion
22 for stay filed in district court, then the stay is
23 extended until the district court acts on it, sort of an
24 addendum clause.

25 COMMISSIONER MARKS: Okay.

1 ACTING CHAIRMAN WADE: So if I have this
2 correctly -- I think I do -- the proposal at this point
3 could be: 60 days of a stay if there is an appeal filed
4 and if there is a motion to stay filed by Delaware in
5 the district court, then the OCC stay will continue
6 until the district court acts on those motions.

7 MR. LARSON: My only response to that is
8 the second "if." It doesn't put the onus on Delaware to
9 file a motion.

10 ACTING CHAIRMAN WADE: If they do not file
11 a motion, it seems to me that --

12 MR. LARSON: Oh. It terminates --

13 MR. FELDEWERT: Yeah.

14 MR. LARSON: I missed that. I'm sorry.

15 ACTING CHAIRMAN WADE: So I will make a
16 motion, and I'll reiterate that. I move that the
17 Commission grant a 60-day stay from the issuance of our
18 order. If an appeal is filed by Delaware timely and if
19 Delaware also files a motion to stay in the district
20 court, then the stay will continue until the district
21 court acts on the motion to stay that is filed within
22 the district court.

23 COMMISSIONER MARKS: Right. I will second
24 that motion.

25 ACTING CHAIRMAN WADE: All those in favor?

1 COMMISSIONER MARKS: Aye.

2 ACTING CHAIRMAN WADE: Aye.

3 (Ayes are unanimous.)

4 ACTING CHAIRMAN WADE: The motion carries.

5 MR. FELDEWERT: Just so I'm clear, that
6 would be -- the period of appeal will commence upon the
7 issuance of an order?

8 MR. BRANCARD: Yeah.

9 And I guess what I would suggest to the
10 Commission is that I do -- just do one order that
11 encompasses both your decision earlier and the decision
12 on the stay, and it's all in one order.

13 ACTING CHAIRMAN WADE: Do we have to vote
14 on that?

15 MR. BRANCARD: Well, the only issue is
16 would you want the chairman to have the authority to
17 sign that order, or do you want to wait until the next
18 meeting to sign that order?

19 COMMISSIONER MARKS: The chairman can sign
20 that order.

21 MR. BRANCARD: Make a motion.

22 COMMISSIONER MARKS: And make it clear that
23 it's the appeal of -- whatever the order is, not the --
24 not the application.

25 ACTING CHAIRMAN WADE: 14484-B.

1 COMMISSIONER MARKS: So I will make a
2 motion for the chairman to sign the order discussed
3 today on the stay and the reinstatement of R-14484-B and
4 the quashing of 14484-D.

5 ACTING CHAIRMAN WADE: I second.

6 All those in favor?

7 COMMISSIONER MARKS: Aye.

8 ACTING CHAIRMAN WADE: Aye.

9 (Ayes are unanimous.)

10 ACTING CHAIRMAN WADE: Motion carries.

11 So if there is nothing else from the
12 parties at this point, we can move on.

13 (Case Number 15855 concludes, 10:40 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 8th day of February 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
Paul Baca Professional Court Reporters

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