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

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

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

Commission Case No. 21744
Division Case Nos. 21629
Order No. R-21575
Order No. R-21575-A

REPLY TO CIMAREX'S RESPONSE TO COLGATE'S MOTION TO DISMISS MAGNUM HUNTER PRODUCTION INC.'S AND CIMAREX ENERGY CO.'S APPLICATION FOR DE NOVO HEARING

For its reply to the response filed by Cimarex Energy Co. and its affiliate Magnum Hunter Production, Inc., (both hereinafter "Cimarex"), Colgate Operating, LLC, ("Colgate") states:

A. Introduction.

In the Division's latest order in this case, being Order R-21575-A the Division denied Cimarex's application to reopen case 21629. This case should end there, and the Commission's time should not be wasted.

In its response Cimarex continues to bring up issues that should have been litigated in a contested hearing before the Division. For example, it argues that representations made to the Division to the effect that Colgate made no "other attempts to negotiate with Cimarex and did not provide any follow-up information prior to the hearing."

Cimarex blames its own company-wide protocol for its office workers during the holiday season for the period from November 22, 2020 through January 15, 2021 and encouraged its

employees to work from home. Cimarex explains that somehow the notice of hearing sent by the Modrall Law Firm, Colgate's counsel during the Division phase of Case No. 21629 was received by Cimarex on December 24, 2020. Thereafter there occurred a series of handling mistakes and blunders made by Cimarex's employees, including an email which contained the wrong subject matter. Because of the wrong subject matter on the email, the person charged with compulsory pooling cases essentially ignored the email.

The notion that Cimarex would have conflicted the Modrall Law Firm from representing Colgate is equally absurd in view of the mistakes and blunders. If anything, this is an issue between the Modrall Law Firm and Cimarex.

Incredibly, Cimarex seemingly blames Colgate for its own faults and blunders, and its failure to enter an appearance and appear at the hearing held on January 7, 2021.

B. NMSA 1978, § 70-2-13 precludes a de novo hearing for a party that is not "a party of record".

There is an absolute reason why persons or entities interested in Division cases enter appearances even though they do not actively participate in the merits of a case and do not make an evidentiary presentation at a hearing. They enter appearances so that they can become a party of record under § 70-2-13, and thereafter if necessary, to ask for a de novo hearing before the Commission.

Cimarex argues that it became a party in the case because under NMAC 19.25.4.10A(2) the word "case" is broader than the word "hearing," and therefore, its entry of appearance filed on the same day (January 19, 2021) that Order R-21575 was issued, was timely. To become a party of record, a person has to appear at the hearing of the case. This is not a difficult concept. The stricture of § 70-2-13 simply does not allow anyone to ask for a de novo hearing before the Commission without having become a party of record at or before a hearing,

Cimarex cites New Energy Economy, Inc v. Vanci, 2012-NMSC-5, 274 P.3d 53, which held in an Environment Department rule making proceeding an appeal could only be taken by parties, those who provided technical evidence, and persons "who have participated in a legally significant manner in administrative rule making …have the right to participate as parties to an appeal if they express such in intention…" Cimarex does not fit in any of these categories.

Cimarex then tries to distinguish New Energy. That case is not helpful for Cimarex. It defines "party" at 274 P.3d 65:

> A "party," as applicable in this case, includes "any person who is permitted to intervene in the particular hearing pursuant to [Rule 1–024 NMRA]." 20.1.2.7(H) NMAC (8/27/2006). In addition to the "party" designation, EIB adjudications anticipate a category called "interested participants," which includes persons—other than parties—who file an entry of appearance at least fifteen days before a hearing. 20.1.2.207(A) NMAC (8/27/2006). (emphasis added).

The definition go on to say that the entry of appearance must include information much like a Prehearing Statement required by the Division and the Commission. Clearly, it makes sense that in adjudicatory proceedings such as a compulsory pooling case, an entry of appearance would occur prior to a hearing.

C. Conclusion.

This is a simple case. Cimarex did not become a party of record before or at the Division hearing. They did not become parties of record, and therefore, are not entitled to review of Order No. R-21575 or R-21575-A. Cimarex and Magnum Hunter are not strangers to the procedures of the Division and the Commission. Clearly, NMSA 1978, § 70-2-25 offers no relief for excusable neglect.

The application for de novo hearing should be denied and dismissed.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

/s/ Ernest L. Padilla
Ernest L. Padilla
Attorney for Colgate Operating, LLC
PO Box 2523
Santa Fe, New Mexico 87504
505-988-7577
padillalawnm@outlook.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on March 22nd, 2021.

Darin C. Savage darin@abadieschill.com
Brent McDonald Brent.mcdonald@prosperitybankusa.com

/s/ Ernest L. Padilla
Ernest L. Padilla