

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

**APPLICATION OF DUKE ENERGY FIELD
SERVICES, LP FOR AN ACID GAS INJECTION
WELL, LEA COUNTY, NEW MEXICO.**

CASE NO. 13589

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DCP'S MOTION FOR PROTECTIVE ORDER

Pursuant to NMAC 19.15.4.16(A), DCP Midstream, LP ("DCP") moves the New Mexico Oil Conservation Commission ("Commission") for a protective order for discovery requested by Randy Smith and in support thereof states as follows:

1. On July 5, 2011, counsel for Randy Smith served First Set of Interrogatories and Requests for Production on DCP Midstream, LP. Responses to these discovery requests are due within thirty days of service, on or around August 4, 2011.

2. A hearing on DCP's Motion to Amend order No. R-12546 is scheduled for July 14, 2011.

3. Mr. Smith previously sought a continuance of the July 14th hearing on the basis that he needed to conduct discovery to understand DCP's motion. On July 5, 2011, the Commission Chair denied the motion ordering that the July 14th hearing will proceed as scheduled and that Mr. Smith already had the opportunity to express concerns about the AGI well at the original 2006 hearing in this case.

4. DCP has two main grounds for seeking a protective order: (1) Mr. Smith has not followed the proper procedure under Commission rules for seeking discovery and the discovery responses are due after the hearing is set to take place; and (2) the discovery requests go beyond

the scope of DCP's motion and the Commission proceeding.

5. The Oil and Gas Act authorizes the Commission to require the production of books, papers and records in any proceeding before it. NMSA 1978, Sec. 70-2-8. Commission rules provide that upon a party's request, the Division Director "shall" issue a subpoena for the production of "books, papers, records, other tangible things or electronic data in advance of the hearing." NMAC 19.15.4.16 (emphasis added).

6. Mr. Smith did not seek a subpoena from the Division Director in compliance with Commission rules. Instead, Mr. Smith served discovery directly on DCP. Moreover, the responses are not due until after the hearing is scheduled.

7. Additionally, Mr. Smith's discovery requests go beyond the scope of DCP's Motion. DCP seeks to be allowed to proceed under the original order in Case No. 13589 and to amend Paragraph N in Order No. R-12546 since from recent Division determination DCP no longer needs to obtain an approved modification of a discharged permit. Mr. Smith seeks discovery that generally fall into one of two categories: (1) Providing justification for a volume increase; and (2) Proving compliance with applicable rules and orders. See discovery requests attached.

8. DCP is not seeking a volume increase. Rather, DCP requests to be allowed to proceed under Order No. R-12546. Mr. Smith already had the opportunity to express concerns about the volume of acid gas to be injected at the 2006 hearing, after which the Commission issued Order No. R-12546.

9. Further, this is not a compliance proceeding. DCP will demonstrate that it has met the conditions of Order No. R-12546. However, that discussion is materially different than an allegation from the Division that DCP has violated a rule or order. DCP is in compliance with

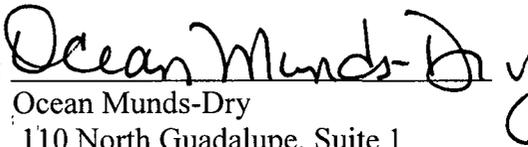
applicable rules but if Mr. Smith believes that DCP has violated a rule, he always has the opportunity to present his concern to the Division. In any event, compliance issues should not take up the Commission's time but instead should be investigated by the Division in the normal course of its business.

10. For the above reasons, DCP should not be required to respond to these discovery requests because they are an undue burden given the limited scope of the July 14 hearing. See e.g. NMRA 1-026 (“[T]he court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense...”)

WHEREFORE, DCP Midstream, LP requests for good cause shown, that this Motion be granted.

Respectfully submitted,

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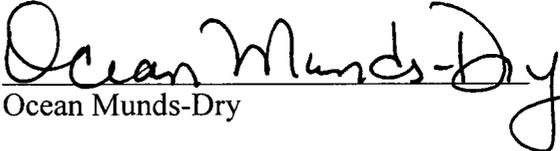
CERTIFICATE OF SERVICE

I certify that on July 12, 2011 I served a copy of DCP's Motion to the following by:

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