

State of New Mexico
Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

Ken McQueen
Cabinet Secretary

Matthias Sayer
Deputy Cabinet Secretary

Heather Riley, Division Director
Oil Conservation Division



May 22, 2018
Sent via email

Mr. Mike Eisenfeld
Energy and Climate Program Manager
San Juan Citizens Alliance
P.O. Box 6655
Farmington, NM 87499

Re: OCD Case No. 16193; Application of Hilcorp Energy Company to Amend Special Rules for the Blanco Mesa Verde Gas Pool; Rio Arriba and San Juan Counties, New Mexico

Dear Mr. Eisenfeld

Thank you for your inquiry concerning this pending case.

In order for us to address San Juan Citizens Alliance's ("SJCA") request for a postponement of the hearing scheduled on May 31, SJCA will need to file a Notice of Intervention and a Motion for Continuance. Both filings are necessary since Rule 19.15.4.13.C NMAC only authorizes "parties" to file motions for continuance. To become a party, as defined by 19.15.4.10.A, to this adjudicatory case, SJCA must file a Notice of Intervention.

1. A Notice of Intervention, to be timely, must be filed with the Division clerk "at least one business day before the date for filing a pre-hearing statement." 19.15.4.11A. Based on the current May 31 setting, pre-hearing statements are due not later than Thursday, May 24. Hence to be timely, a Notice of Intervention must be filed not later than 5:00 p.m. on Wednesday, May 23. The examiner in charge of the case may, however, accept a late filed notice of intervention, in his discretion.

2. A person who files a timely notice of intervention becomes a party, subject to its intervention being stricken on motion if it fails to show standing. As a party, SJCA would be entitled to file a Motion for Continuance of the May 31 setting provided it does so not later than 48 hours in advance of the scheduled hearing, which would be 8:15 a.m. on Tuesday, May 29. 19.15.4.13.C.

3. In addition, if SJCA wants to present technical evidence or cross examine witnesses at the hearing on May 31, it will have to file a Pre-Hearing Statement, conforming to the requirements of 19.15.4.13.B, not later than 5:00 p.m. on Thursday, May 24.

All papers should be filed with the Division Clerk, Florene Davidson, at the Division's offices at 1220 S. St. Francis Drive in Santa Fe, New Mexico, by hand delivery, FAX or email, not later than the deadline specified. Copies of any papers filed with the Division Clerk should be simultaneously emailed to the Applicant's attorney, Michael Feldewert, at the email address shown on the Application.

Thanks for your interest in our process. We have provided the above information in order that your participation may not be hampered by procedural controversies. For your convenience, we attach copies of applicable rules cited in the foregoing discussion.

Sincerely,



Heather Riley
Director

Xc: Michael H. Feldewert
Adam G. Rankin
Holland and Hart

CITED RULES

19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:

- A. The parties to an adjudicatory proceeding shall include:
- (1) the applicant;
 - (2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and
 - (3) a person who properly intervenes in the case.
- B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.
- C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.
- D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.
[19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/08]

19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

- A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:
- (1) the intervenor's name;
 - (2) the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;
 - (3) the nature of intervenor's interest in the application; and
 - (4) the extent to which the intervenor opposes issuance of the order applicant seeks.
- B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.
- C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.
[19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/08]

19.15.4.13 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

- A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the business day immediately preceding the date when the party files the pleading or correspondence with the division or the commission clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to a party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. Parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at a hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. An initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an e-mail and facsimile number if available.
- B. Pre-hearing statements.
- (1) A party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented, their attorneys in the manner Subsection A of 19.15.4.13 NMAC provides, at least four business days in advance of a scheduled hearing

before the division or the commission, but in no event later than 5:00 p.m. mountain time, on the Thursday preceding the scheduled hearing date. The statement shall include:

- (a) the names of the party and the party's attorney;
- (b) a concise statement of the case;
- (c) the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;
- (d) the approximate time the party will need to present its case; and
- (e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) A party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by an attorney shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to present the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.4.13 NMAC - Rp, 19.15.14.1211 NMAC, 12/1/08]