

MILLER STRATVERT

LAW OFFICES

Stephen M. Williams
Seth V. Bingham
James B. Collins
Timothy R. Briggs
Rudolph Lucero
Deborah A. Solove
Lawrence R. White
Virginia Anderman
Thomas R. Mack
James J. Widland

Bradley D. Tepper
James R. Wood
Kirk R. Allen
H. Brook Laskey
Paula G. Maynes
M. Dylan O'Reilly
Jennifer D. Hall
Todd A. Schwarz
Robert H. Clark
Richard L. Alvidrez

Matthew S. Rappaport
Terri Sauer Beach
Nate A. Cobb
Stephen B. Waller
Joshua L. Smith
William T. Denning
Tom Bunting
Luke A. Salganek
Erica B. Scott
Cody R. Rogers

Dan A. Akenhead
Ryan M. Walters*

Of Counsel:
Ranjeet B. Miller
William K. Stratvert
Robert A. Corchine
Gordon S. Little

*Admitted only in Texas

500 Marquette NW, Suite 1100
Albuquerque, NM 87102

Mailing Address:
P.O. Box 25687
Albuquerque, NM 87125-0687

Telephone:
(505) 842-1950
(800) 424-7585
Facsimile: (505) 243-4408

December 14, 2012

VIA U.S. MAIL

New Mexico Oil Conservation Commission
c/o Ms. Florene Davidson
1220 South St. Francis Drive
Santa Fe, New Mexico 87504

Adam Rankin, Esq.
Holland & Hart, LLP
110 North Guadalupe, Suite 1
Santa Fe, NM 87501

Sonny Swazo, Esq.
Gabrielle Gerholt, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87504

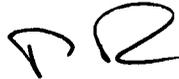
Cheryl Bada, Esq.
New Mexico Oil Conservation Commission
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504

Re: Application of Duke Energy Field Services, LP for an Acid Gas Injection Well, Lea County, NM, Case No. 13589

Dear Commissioners, Ms. Davidson, and Counsel:

Enclosed is the Smiths' Pre-Hearing Statement and Exhibits 1 through 3. Please contact me if you have any questions. We look forward to seeing you all on December 20th.

Sincerely,



Richard L. Alvidrez
Thomas J. Bunting

TJB/dcg

\\abq-tamarack\prodata\013144-041964\correspondence\2094575.doc

A PROFESSIONAL ASSOCIATION

ALBUQUERQUE
(505) 842-1950

FARMINGTON
(505) 326-4521

LAS CRUCES
(575) 523-2481

SANTA FE
(505) 989-9614

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

RECEIVED OGD
2012 DEC 18 A 11:38

APPLICATION OF DCP MIDSTREAM, LP
TO RE-OPEN CASE NO. 13589 TO AMEND
RULE NO. R-12546.

CASE NO. 13589

THE SMITHS' PRE-HEARING STATEMENT

Randy Smith, Naomi Smith, and the Smith Farm and Ranch (collectively the "Smiths") hereby present the Commission with their pre-hearing statement for the hearing on the Motion to Re-Open Case No. 13589 ("Motion") filed by DCP Midstream, LP ("DCP"). The Smiths oppose DCP's Motion because DCP has not proven it can safely and reliably operate its proposed Linam Ranch acid gas injection well ("AGI") No. 2 and, indeed, its existing AGI No. 1 has had numerous operational problems that have threatened the health and safety of neighboring landowners. Furthermore the Smiths contend that, contrary to DCP's assertions otherwise, the Lower Bone Springs formation does not fully contain the injected acid gas and such gas has made its way into the water table underneath the Smiths' property.

Appearances

1. Randy Smith, individually and on behalf of the Smith Farm and Ranch
2. Naomi Smith, individually and on behalf of the Smith Farm and Ranch
3. Richard L. Alvidrez and Thomas J. Bunting, counsel
Miller Stratvert PA
P. O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
Fax: (505) 243-4408

Statement of the Case

DCP filed its C-108 Application for Authority to Inject on October 29, 2012. The Application requests the Commission to re-open Case No. 13589 for the purpose of amending Order No. R-12546-D, so that DCP may install what it terms a "redundant" AGI. DCP's Application states that the Lower Bone Springs formation has completely contained the acid gas injected through AGI No. 1, and will completely contain the acid gas proposed to be injected through AGI No. 2. The Application also states that the AGI No. 2 will be functionally reliable. Finally, the Application states that there is no hydrologic connection between the proposed injection zone and any known sources of drinking water.

The Commission granted the Smiths' Motion to Continue the hearing in this matter and re-set the hearing for a special meeting of the Commission on December 20, 2012.

Reasons for Opposition

The Smiths oppose the Application for two main reasons: First of all, DCP has not presented evidence that the proposed AGI No. 2 can be safely constructed and operated. The operational history of AGI No. 1 suggests that this second well will be plagued with problems of equipment failure, corrosion of the well casing, and excess and unintended emissions of H₂S into the air.

Second, DCP has not refuted or even addressed the Smiths' contention that at least one residential water well on the Smiths' property has become contaminated with H₂S from the AGI No. 1 injection zone. Mr. Smith brought up this concern during the July 14, 2011 hearing on DCP's Motion to Amend Rule No. R-12546. Further testing of the wells on the Smiths' property, conducted by both the Oil Conservation Division and an independent laboratory, has

revealed the presence of H₂S in the water. Tests have also confirmed that the H₂S present in the Smiths' water is not from a biologic source.

Witnesses

Either Randy or Naomi Smith will testify at the hearing. Either Mr. or Mrs. Smith plan to share their personal experiences with the spotty operational record of AGI No. 1. They will also testify regarding the incidence of H₂S in the well(s) on their property. Estimated time: 30 minutes.

Geoffrey Leking will testify under subpoena at the hearing. Mr. Leking, who is a compliance officer for the Division, will testify regarding his testing and observations of the water wells on the Smiths' property. Estimated time: 20 minutes.

Celey Keene may testify at the hearing. Ms. Keene, who is the Laboratory Director and Quality Manager of Cardinal Laboratories in Hobbs, New Mexico, may testify regarding Cardinal Laboratories' testing of samples from water wells on the Smiths' property and regarding the characteristics of the H₂S present in the samples. Estimated time: 20 minutes. The Smiths will notify the Commission and the parties as soon as they confirm Ms. Keene's attendance at the hearing.

W. Scott Brake may testify at the hearing. Mr. Brake, who is employed at the Xcel Energy Maddox power plant in Hobbs, New Mexico, may testify regarding the operational record of AGI No. 1 and regarding results of testing conducted on the Smiths' water wells. Estimated time: 20 minutes. The Smiths will notify the Commission and the parties as soon as they confirm Mr. Brake's attendance at the hearing.

Exhibits

- Exhibit 1: Oil Conservation Division filings and e-mail communications regarding the safety and operational characteristics of AGI No. 1.
- Exhibit 2: New Mexico Environment Department, Air Quality Bureau, Notice of Violation Penalty Payment Tracking Coversheet.
- Exhibit 3: Testing results from Cardinal Laboratories.
- Any exhibits necessary for rebuttal.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/Thomas J. Bunting
RICHARD L. ALVIDREZ
THOMAS J. BUNTING
Attorneys for Randy Smith, Naomi Smith,
and the Smith Farm and Ranch
P. O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
Fax: (505) 243-4408

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email to the following counsel of record on this the 13th day of December, 2012 and, also, paper copies will be mailed via U.S. Mail to counsel of record and to the Commissioners on December 14th, 2012:

Adam G. Rankin, Esq.
Holland & Hart, LLP
Attorney for DCP Midstream, LP
P. O. Box 2208
Santa Fe, NM 87504-2208

Sonny Swazo, Esq.
Gabrielle Gerholt, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87504

Cheryl Bada, Esq.
New Mexico Oil Conservation Commission
1220 S. St. Francis Drive
Santa Fe, NM 87504

/s/Thomas J. Bunting
RICHARD L. ALVIDREZ
THOMAS J. BUNTING

\\abq-tamarack\prodata\013144-041964\plcadings\2094287.docx