

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

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**APPLICATION OF LIGHTNING DOCK
GEOTHERMAL HI-01, LLC FOR APPROVAL
TO INJECT INTO A GEOTHERMAL AQUIFER
THROUGH THREE PROPOSED GEOTHERMAL
INJECTION WELLS AT THE SITE OF THE
PROPOSED LIGHTNING DOCK GEOTHERMAL
POWER PROJECT, HIDALGO COUNTY, NEW
MEXICO**

CASE NO. 15357

**APPLICATION OF LIGHTNING DOCK
GEOTHERMAL HI-01, LLC TO PLACE WELL
NO. 63A-7 ON INJECTION-GEOTHERMAL
RESOURCES AREA, HIDALGO COUNTY, NEW
MEXICO**

CASE NO. 15365

LIGHTNING DOCK'S OPPOSITION TO CONTINUANCE

Lightning Dock Geothermal HI-01, LLC ("Lightning Dock"), by and through its attorney Michelle Henrie of Michelle Henrie, LLC, respectfully asks the Oil Conservation Commission ("Commission") to deny AmeriCulture, Inc.'s ("AmeriCulture's") request for a continuance of the hearing.

Background

Lightning Dock submitted to the Oil Conservation Division ("Division") several G-112 applications ("applications"). The applications seek permits to drill injection wells for the Lightning Dock geothermal project. Three applications were submitted in June. A fourth application was submitted in July. All applications drew objections from AmeriCulture, Inc. A chart of the applications is below.

Well No.	Date submitted to OCD	Date objection received by OCD	Originally scheduled for hearing on August 13, 2015
15-8	June 1, 2015	June 20, 2015	Yes
76-7	June 1, 2015	June 20, 2015	Yes
13-7	June 15, 2015	June 20, 2015	Yes
63A-7	July 1, 2015	July 15, 2015	No

On July 16, 2015, the Oil Conservation Commission issued Order No. R-14021. This order set three of the four applications for a Commission hearing on August 13, 2015, even though the Division also had received AmeriCulture's objection to the fourth application prior to issuance of the order. All applications should have been heard by the Commission on August 13th.

On July 22, 2015, AmeriCulture's attorney wrote a letter to the Commission's Secretary asking to reschedule the August 13th hearing. Lightning Dock was not informed of the request and was not consulted. Instead, the Commission issued a second order, Order R-14021-A, adding the fourth well, Well LDG 63A-7 to the hearing. And—without any notice, opportunity to object, argument, or justification for doing so—postponing the hearing to September 10, 2015.

Now, on the eve of Labor Day weekend, less than one week before the September 10th hearing, AmeriCulture requests another continuance. This request to postpone should be denied.

ARGUMENT

In New Mexico, appellate courts review motions for continuance for abuse of discretion and based on the facts made known to the trial court (in this case, the Commission) at the time of the motion. Rubin v. Rubin, 120 N.M. 592, 904 P.2d 41 (N.M.App., 1995.). The Commission's denial of a continuance does not deprive a litigant of due process. Yadon v. Quinoco Petroleum,

Inc., 114 N.M. 808, 845 P.2d 1262, (Ct.App.1992), *cert. denied*, 114 N.M. 720, 845 P.2d 814 (1993). A continuance requested at the last-minute need not be granted. Lopez v. City of Albuquerque, 118 N.M. 682, 884 P.2d 838 (Ct.App.), *cert. denied*, 118 N.M. 533, 882 P.2d 1046 (1994).

This Commission should balance the need for additional time against the inconvenience, increased costs, and prejudice to the opposing party. Commonwealth v. Cavanaugh, 371 Mass. 46, 51 (1976). The Commission may consider prior delays and their reasons, hardship to the nonmovant, the good faith of the movant, and the conduct of the moving party. Amarin Plastics, Inc. v. Maryland Cup Corp., 946 F.2d 147, (1st Cir. 1991). Continuances are not favored under the law. The Commission should be wary of granting continuances that may prejudice opposing parties who are ready for trial. El Paso Elec. v. Real Estate Mart, Inc., 98 N.M. 490, 650 P.2d 12 (Ct. App. 1982):

1. **The general rule in New Mexico is that continuances are granted for "good cause" at the discretion of the trier of fact. Trial Handbook for New Mexico Lawyers § 3:1 (Continuances, generally); 17 Am. Jur. 2d Continuance § 6 (Generally). AmeriCulture has not provided any facts to establish "good cause" for its motion. Absent evidence of "good cause," AmeriCulture's request for a continuance must be denied.**

AmeriCulture's strategy of filing a late IPRA request is not "good cause." AmeriCulture knew as early as June 20, 2015 that it was objecting to Lightning Dock's injection well applications and requesting a hearing. It did not submit an IPRA request until more than fifty days later: August 10, 2015.

AmeriCulture also pretends that it is entitled to Lightning Dock's trade secrets. It is not. Lightning Dock hired Intellectual Property counsel to meet with Division Staff on February 1, 2013. Counsel provided Division Staff with information about trade secrets and their obligation to protect trade secrets under the New Mexico Trade Secrets Act and other applicable laws.

Lightning Dock has expended considerable resources gathering its data.¹ The Division has done the right thing to protect Lightning Dock's trade secrets. AmeriCulture is not entitled to this information. The fact that AmeriCulture does not possess Lightning Dock's confidential trade secret information is not "good cause" for postponing a hearing.

Absent evidence of "good cause" that would overcome the obvious and intended prejudice, expense, and delay to Lightning Dock and the Division (as described by Allison Mark's email of Friday September 4, 201 at 4:57 PM opposing the Motion), AmeriCulture's request for a continuance must be denied.

- 2. Continuances are not favored because courts must guard against unreasonable delay. El Paso Elec. v. Real Estate Mart, Inc., 98 N.M. 490, 650 P.2d 12 (Ct. App. 1982). Courts should be wary of granting continuances that may prejudice opposing parties who are ready for trial. Id. Lightning Dock and the Division are ready and willing to proceed, and will be prejudiced by further delay.**

Time is of the essence for Lightning Dock. Lightning Dock has now twice arranged for witnesses to be present in Santa Fe to address a meritless objection filed by AmeriCulture for improper reasons. Five witnesses are traveling from Albuquerque, Socorro, and Nevada. They have made their travel arrangements. They have been tasked with preparing exhibits and testimony. They have pushed aside other commitments and work so that Lightning Dock's team can meet the Commission's September 10th hearing date and present its defense. Bear in mind, this hearing has—from Lightning Dock's perspective—already been improperly delayed.

Lightning Dock and the Division are ready to proceed. Lightning Dock should not have to bear expense of rearranging travel plans nor the expenses caused by further project delay. It is

¹ AmeriCulture's data collection efforts, by contrast, involved one and only one pump test in October 2000.

unfair and disrespectful to Lightning Dock's witnesses to ask them to reserve three days (one for hearing preparation and two for the hearing) in September and then change the plan at the last minute.

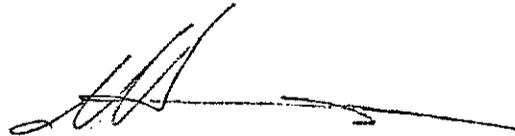
Already Lightning Dock is two months behind its drilling schedule because of AmeriCulture's abuse of the hearing process. This latest Motion is nothing more than another blatant delay tactic for the purpose of harassment.

CONCLUSION

For the foregoing reasons, Lightning Dock respectfully asks the Commission to deny AmeriCulture's request for a continuance.

Respectfully Submitted,

MICHELLE HENRIE, LLC

A handwritten signature in black ink, appearing to read 'MH', with a long horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was emailed as follows on September __, 2015:

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