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

APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NON-STANDARD SPACING AND PRORATION UNIT, COMPULSORY POOLING, AND NON-STANDARD LOCATION LEA COUNTY, NEW MEXICO.

Case No. 15366
Order No. R-14097-A

AMTEX'S MOTION FOR REHEARING

Amtex Energy, Inc., ("Amtex") hereby submits its Motion for Rehearing pursuant to NMSA 1978 § 70-2-25. The Commission entered Order R-14097-A on March 10, 2016 granting Matador's Motion to Dismiss Amtex's "Appeal." Amtex had filed an application for de novo hearing on the force pooling application of Matador following entry of Division Order R-14097 on December 14, 2015. The Commission's Order is erroneous in several respects:

1. The Commission has misinterpreted and misapplied NMSA 1978 §70-2-13 and Rule 19.15.4.23(A) NMAC by treating Amtex's de novo application as an appeal. The procedure under the statute and rule call for a de novo hearing before the Commission, not an appeal of the Division's Order. A de novo proceeding requires a hearing on the merits without regard to the record before the Division. Given the de novo nature of the proceeding before the Commission, the right to be heard before the Commission should be liberally construed in favor of a hearing on the merits. This is particularly true where, as here, Amtex raises challenges to the Division's jurisdiction to approve the Matador force pooling application. The Commission's Order improperly denies Amtex its right to a de novo hearing.

2. The Commission's Order is based on an erroneous interpretation and application of NMSA 1978 §70-2-13 and Rule 19.15.4.10 NMAC as they pertain to the time when a party may file an entry of appearance in a Division proceeding to establish status as a party of record. The Rule authorizes a party entitled to notice to file an entry of appearance "at any time." At any time means just that. The entry of appearance need not be filed with the Division, but can be filed with the Commission clerk. There would be no reason to file a de novo request with the Commission clerk until after the Division issues its Order. Thus, the Rule contemplates that a party may file its entry of appearance at any time before the Division Order becomes final, including after the Division issues its decision.

3. Amtex, a party entitled to notice, filed an entry of appearance prior to the issuance of the Division's Order of December 14, 2015, thus was a party of record adversely affected by the Order. Under a literal and common sense reading of the Rule, Amtex is entitled to a de novo hearing before the Commission.

4. The Commission's Order is an *ultra vires* effort to rewrite its rules. The Commission's reading of the rule to require an entry of appearance prior to the Division hearing on the application imposes requirements not set forth in the rule itself. Had the Commission wanted to require an entry of appearance prior to the Division hearing in adopting the Rule, it could have easily done so. Instead, the Commission adopted a rule that allows a party to enter an appearance "at any time," including when a de novo hearing is requested. As a creature of statute, the Commission does not have the authority to amend its rules on an ad hoc basis in order to reach a result in an adjudicatory proceeding.

5. This case presents important issues concerning the jurisdiction of the Division and Commission in force pooling proceedings and the authority of the Division and Commission to award non-consent penalties. The Commission should deal with these issues head on, not avoid the issue by rewriting its rules to avoid them.

6. Amtex has established in pleadings filed with both the Division and the Commission that the Division Order granting Matador's Application will adversely impact Amtex's property rights. The Division Order precludes Amtex from drilling its own Bone Springs wells in the eighty (80) acres comprising the south half of the acreage at issue in Matador's Application. Amtex owns interests in the south half acreage while Matador owns no interest in the south half acreage. Moreover, Amtex's interest in its acreage has been effectively taken without just compensation given the non-consent penalty applied by the Division without basis and without requiring Matador to support the requested penalty by competent evidence. Amtex has also been injured by the Division Order which applies a non-consent penalty in excess of that authorized by statute. *See* Amtex's Response to Motion to Quash filed in the Division proceeding on October 13, 2015, and Amtex's Response in Opposition to Matador's Motion to Dismiss Appeal filed February 16, 2016, both of which are incorporated herein by reference.

WHEREFORE, Amtex respectfully requests that the Commission withdraw and vacate Order R-14097-A and set this matter for de novo hearing on Matador's force pooling application.

Respectfully submitted,

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By _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 25th of March, 2016:

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