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

APPLICATION OF CHISHOLM ENERGY OPERATING, LLC FOR A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

AUG 14 2018 PM04:24

CASE NO. 16027
ORDER NO. R-14719

CIMAREX ENERGY CO.'S PRE-HEARING STATEMENT

Cimarex Energy Co. ("Cimarex"), submits this Pre-Hearing Statement for the above-referenced case pursuant to the rules of the Oil Conservation Division and Commission.

APPEARANCES

APPLICANT

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STATEMENT OF CASE

The applicant in the above-styled cause, Chisholm Energy Operating, LLC ("Chisholm") seeks an order from the Commission approving: (1) the creation a non-standard 638.16-acre, more or less, spacing and proration unit comprised of the W/2 of Section 3 and the W/2 of Section 10, Township 24 South, Range 26 East, NMPM, Eddy County, New Mexico; and (2) the pooling of all uncommitted interests in the Wolfcamp formation underlying this acreage. Said non-standard unit is to be a project area for three proposed initial wells: the **Black River 3-10 Fed Com WCA No. 2H Well**, the **Black River 3-10 Fed Com WCA No. 3H Well**, and **Black River 3-10 Fed Com WCA No. 4H Well**. Also to be considered will be the cost of drilling and completing said wells and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of Chisholm Energy Operating, LLC as operator of the wells and a 200% charge for risk involved in drilling said wells.

Cimarex Energy Co. ("Cimarex") owns a large portion of working interests within the proposed project area. Cimarex's interests are located solely within the W/2 of Section 10 and it is the operator under two different Joint Operating Agreements ("JOAs") which cover the Wolfcamp formation within all or portions of Section 10. Prior to the Division hearing in this matter, Chisholm entered in to a deal in principle with Cimarex to trade approximately 32 net mineral acres, and to take a term assignment for Cimarex's remaining interests (approximately 100 net mineral acres) within the W/2 of Section 10 for a price of $7,000 per net mineral acre. In exchange for this deal, Cimarex agreed not to present witnesses and evidence during the Division hearing. While the parties were working on finalizing the paperwork for this agreement,

Chisholm began to drill and complete the 4H well and led Cimarex to believe that the deal was still in place. On June 28, 2018, Cimarex filed a timely request for the *de novo* hearing with the Commission in order to preserve its rights in the event paperwork was not finalized by the parties. As late as July 23, 2018, Chisholm confirmed that was honoring the agreement reached by the parties.

On July 30, 2018, Chisholm backed out of the deal and declared Cimarex a non-consenting working interest owner within the project area. Chisholm now seeks to apply a 200% risk penalty to Cimarex's working interest or alternatively offers to pay Cimarex an amount of $2,500 per net mineral acre – which is substantially different than what the parties agreed to prior to the Division hearing. Cimarex objects to Chisholm's bad faith negotiations and actions and requests entry of an order which includes following:

(1) No Risk Penalty.

While the Oil and Gas Act, NMSA 1978, § 70-2-17(C) allows the Commission and Division to issue orders which allow for the compulsory pooling of uncommitted interests, the statute further provides that such orders "shall be upon terms and conditions as are just and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both." The statute also states that when charges are assessed to parties who "elect not to pay [their] proportionate share" such charges "shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable" and that if a charge for risk is assessed, it "shall not exceed two hundred percent of the nonconsenting working interest owner's or owners'

prorata share of the cost of drilling and completing the well." NMSA 1978, § 70-2-17(C). Pursuant to these statutory mandates, Commission Rule 19.15.13.8 NMAC creates a rebuttable presumption that a 200% risk penalty applies, unless a party responding to a compulsory pooling application seeks a different risk charge.

Here, Cimarex will show that a 200% risk penalty is not justified. Cimarex will present geologic and technical evidence at the *de novo* hearing which proves that there is no appreciable geologic, reservoir or operational risk associated with drilling the **Black River 3-10 Fed Com WCA No. 2H**, **Black River 3-10 Fed Com WCA No. 3H**, and **Black River 3-10 Fed Com WCA No. 4H** wells. These are wells that Chisholm has (or is in the process) of being able to quickly drill and complete within the Upper Wolfcamp formation in Eddy County. Similar wells have been successfully drilled and completed by numerous other operators within Eddy County and such wells have resulted in sufficient production to reach payout. Consequently, Cimarex asks that the Commission enter an order finding that no risk penalty applies to pooled parties within the proposed unit.

(2) Providing Pooled Parties With a New Election Period.

The Oil and Gas Act provides that pooling orders "shall be made after notice and hearing, and shall be upon such terms and conductions as are just and reasonable[.]" NMSA 1978, § 70-2-17(C). Cimarex will present evidence at hearing which shows that a new or amended order is warranted which allows for a new election period to elect to participate in Chisholm's operations because Chisholm failed to provide adequate notice of its operations prior to the Division hearing. As a consequence, a new election period should be provided for so that parties can properly determine whether or not to

elect in to the wells.

More specifically Chisholm materially changed its development plans, acted in bad faith, and failed to provide notice to numerous parties who own contractual interest under the pre-existing JOAs in Section 10. For example, Chisholm advertised and specifically stated in its application that the Black River 3-10 Fed Com WCA No. 2H, Black River 3-10 Fed Com WCA No. 3H, and Black River 3-10 Fed Com WCA No. 4H wells would be completed simultaneously. Likewise, it provided AFEs to and cost estimated under the Division's Order which contemplated that zipper fracking would be utilized to complete the wells. Despite these representations during the Division proceedings, the wells are actually not being simultaneously completed by Chisholm resulting in material changes from what was advertised and testified to before the Division. This is a material change from the relief requested in Chisholm's pooling application, and warrants that a new notices and new election period be afforded to pooled parties.

In addition, Chisholm has not provided any notice to parties with contractual rights under the JOAs in Section 10 to drill wells within the Wolfcamp formation. As a result, Chisholm has not provided proper notice of its application to all affected parties.

Finally, it was not just and reasonable for Chisholm to enter in to a deal in principle with Cimarex to satisfy objections prior to the Division hearing and then attempt to back out of that deal while wells were being drilled in order to obtain a 200% risk penalty or leverage a below-market rate purchase of Cimarex's working interests.

(3) The Entire Wolfcamp Formation Will Not be Developed by the Wells.

Finally, Cimarex will show that the wells proposed by Chisholm will not develop

any reserved from the lower Wolfcamp. As a result, this acreage should not be compulsory pooled and held by Chisholm under a compulsory pooling order since Chisholm will not obtain any production from these portions of the Wolfcamp formation.

PROPOSED EVIDENCE

APPLICANT:

WITNESS	ESTIMATED TIME	EXHIBITS
Caitlin Pierce, Landman	**Approx. 30**	**10**

Ms. Pierce has worked as a landman at Cimarex for over eight years and is a member of A.A.P.L.Ms. Pierce will provide testimony concerning Cimarex's communications with Chisholm regarding the development of the W/2 of Section 10, the deal reached by the parties prior to the Division Hearing, and Chisholm's subsequent offers. Ms. Pierce will further testify about the 1968 and 1996 JOAs that govern operations within Section 10 and Chisholm's failure to notify parties who own contractual interests under those operating agreements. Ms. Pierce will further testify that Cimarex should be appointed as the operator of the unit.

Harrison R. Hastings, Geologist	**Approx. 30**	**6**

Mr. Hastings has a Bachelor of Science in Geology and a Master's of Science in Geology from Texas A&M University in College Station, Texas. He has worked as a geologist for Cimarex for approximately 16 months, and is a member of A.A.P.G., the Houston Geological Society and the West Texas Geological Society. Mr. Hastings will testify that there is no geologic risk to the development plans proposed by Chisholm and that the imposition of a 200% risk penalty is not warranted. Mr. Hastings will also offer testimony concerning his study of the Wolfcamp formation in the proposed unit and his study of other, similar wells drilled within the area

Landon Riser, Engineer	**Approx. 30**	**3**

Mr. Riser currently works as a reservoir engineer for Cimarex. Mr. Riser graduated with a Bachelor of Science and a Master of Science in Petroleum Engineering from Texas A&M University in College Station, Texas. Mr. Riser has worked as a petroleum engineer within the Permian Basin for more than four years. Mr. Riser will offer testimony at hearing which establishes that a 200% risk penalty is not warranted in the case and shows that there is little operational risk and no reservoir risk within the proposed unit. Mr. Riser will further offer testimony that confirms that Cimarex should be appointed as operator of the unit.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.

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 on August 14, 2018.

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