

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE REHEARING OF
PROPOSED AMENDMENTS TO THE COMMISSIONS
RULES ON FINANCIAL ASSURANCE
PLUGGING AND ABANDONMENT OF
WELLS 19.15.8.9 NMAC

Case No. 16078

PRE-HEARING STATEMENT

Larry Marker (pro se) files this pre-hearing statement and notice of appearance.

STATEMENT OF THE CASE

- 1 I, Larry Marker and affected independent operators acknowledge, support and appreciate the amending of the application removing from state administered financial assurance requirements wells covered by federally required financial assurance.
- 2 We request the commission approve the particular proposed amendment to rule 19.15.8.9 part A to exclude Federal assured wells as presented by the OCD.
- 3 The rehearing filed was requested to include amendments proposed of rules 19.15.8.9 NMAC part C paragraph 1 and 2 also part D paragraph 1.
- 4 The rehearing request was accepted and a limited re-hearing was granted by the commission while acknowledging the lack of proper standing of Larry Marker as a “party to the original hearing”.
- 5 The rule 19.15.3.7 part B defines a party as an applicant or person filing a pre-hearing statement.

6 The rule 19.15.3.15 part D pursuant to Section 70-2-12.2 NMSA 1978 includes any person adversely affected by a rule adopted under the Oil and Gas Act.

7 The original hearing of this CASE NO. 16078 was held on July 19th and 20th 2018.

8 Public testimony was provided on July 19th by Larry Marker and Rory McMinn, with a written statement also submitted by Larry Marker.

9 The commission began deliberations after hearing testimony and public comments on July 19th

10 The commission adjourned on July 19th to reconvene July 20th.

11 Larry Marker and interested parties known to him left Santa Fe after the hearing adjourned on July 19th.

12 On July 20th in violation of Rule 19.15.3.13 NMAC part b and 19.15.3.9 NMAC the commission recalled and allowed the OCD to provide testimony and evidence after deliberations had begun.

13 The commission did not allow for public comment prior to the conclusion of the hearing on July 20th violating Rule 19.15.3.12 part 2 paragraph f.

14 The commission approved the proposed rule changes as submitted by the OCD on Aug 20th

15 An application for rehearing was filed timely by Larry Marker on Sept 6th.

16 The transcripts for the hearing were placed in the hearing file Sept 28th.

17 The transcripts revealed the fact that the OCD was allowed to provide additional testimony in violation of procedural rules.

18 The OCD testimony of July 20th was beyond the scope of the clarification of information requested by the commission on July 19th.

19 The OCD testimony of July 20th was not rebutted, questioned or exposed to cross examination during the hearing.

20 The OCD testimony of July 20th was not known by Larry Marker prior to the deadline and filing of the application for re-hearing on sept 6th

21 The testimony of July 20th was not known by Larry Marker in time to be examined or rebutted in the text of the rehearing application.

22 The OCD testimony provided post deliberation had it been known would have been used in the application for rehearing.

23 I am including this information in this pre-hearing statement to provide a complete record of the events of this case.

24 A reasonable person would conclude that the testimony the OCC allowed the OCD to present post deliberation far exceeds the threshold of documentation clarifying previous provided testimony and violates administrative rulemaking procedures.

25 The following text will refer to the transcript of the hearing of July 20th (Exhibit A) with observations, comments and rebuttal as to attempt to offer an alternative analysis of the information provided by the OCD.

26 Ref –Ex A The transcript of the 2nd day of the hearing reinforces our position that the OCD is biased towards the small to medium operators.

27 Ref-Ex A The OCD is using a strictly mathematical approach to demonstrate potential liability. Assuming that is proper and we extrapolate from the 5.9 compliance list (the basis of liability according to the OCD) we find 949 inactive wells under state jurisdiction. Using OCD provided plugging cost data the assumed liability to the State would be about \$30,000,000.00 (30 million dollars). The OCD testified to currently having about 30 million dollars in financial assurance. From a strictly mathematical approach the current assurance would appear to be sufficient.

28 Ref-Ex A page 23, 24 and 57 The OCD testified that our current financial assurance requirements are grossly inadequate compared to other states. The OCD would agree and the OCC stated that other states have similar compliance issues. The logical conclusion would be that if the states that have larger assurance requirements still have the same compliance issues as we do is an indicator that an increase in assurance does not solve the problem.

29 Ref-Ex A page 24 and 25 The OCD testified that the cost to plug a well for the OCD is higher than the cost to plug a well for an operator. The OCC testified that this fact is justification to force the operator to provide additional financial assurance.

30 Ref-Ex A page 30 Commissioner Martin inquired to the witness “You have a compliance problem with the smaller operators. How is increasing their bond going to solve that for you?” Commissioner Martin pressed for an answer twice after asking the original question. That question remains to be answered.

31 Ref –Ex A page 24 and 25. The existence of some amount of contempt, for small and medium operators is displayed by referencing the operators who demonstrated an effort to participate in the rulemaking process as “The people that were here yesterday” and the statement of “My sympathy isn’t really very high”. The text of the exhibited transcript has other examples of this contempt some more subtle than others.

32 Ref –Ex A page 10 The OCD testified that the bonds of larger operators are not actually redeemed. This information needs to be quantified by presenting the evidence of how many bonds of small to medium operators were redeemed.

33 Ref –Ex A page 10 The OCD does not acknowledge and may not know the fact that a letter of credit provided by an operator reduces his ability to borrow by the amount of the credit issued on the letter. In fact, being forced to commit assets to a non-productive part of his business.

34 Ref-Ex A page 30 The OCD testified that they were increasing bonds on every operator in the state. This contradicts previous claims to the contrary.

35 Ref- Ex A. The OCD illogically claims the state is exposed to more liability from the small to medium sized operators (stripper well operators) offering only the 5.9 inactive well list to substantiate this claimed unequitable liability.

GENERAL STATEMENTS RELEVANT

36 The OCD did not demonstrate an attempt to calculate the cost of this regulation.

37 Most of the small to medium independent producers are unable to offset this increase of costs of regulation.

38 The OCD did not express any concern or even address the number of operators forced to be out of compliance by these proposed increases.

39 The OCD did not demonstrate an effort to research the financial jeopardy to overriding interest owners affected by the implementation of these rules.

40 The commission did not demonstrate an effort to apply a grandfather (ex post facto) clause to these rules.

41 The cost of this regulation will reduce the value of, or completely make worthless, marginally producing properties to the extent of forcing a regulatory takings claim (inverse condemnation) when ripe.

42 Financial resources, cash, credit, assets pledged and premium costs that are committed to financial assurance, will reduce the amount of financial resources available to the operator to operate or grow his business.

43 A fact-specific analysis reveals that the OCC did not ask for or receive enough evidence to make a competent decision on this subject.

LIMITED WITNESS CLARIFICATION

44 After discussions with several independent operators, I will not be requesting an appearance or testimony from any independent operators at this hearing

45 Over the past several months, I have been warned by several experienced operators that my attempts to participate in the rule making process would bring retribution from the regulatory agencies.

46 I dismissed these unverified warnings.

47 I was of the belief that the participation of the operators in the rulemaking process is vital, and felt the regulatory agencies shared this belief.

48 I was able to provide my comments and opinion at the hearing of this case on July 19th of this past summer. I was not comfortable in such a setting but

considered it my obligation and a privilege to represent the small and medium operations guys from the field. As I said, getting most independent operators to come to Santa Fe and participate in a rulemaking hearing is difficult.

49 A few of us appeared to present our case and felt confident about our efforts to participate and went home not expecting the OCD or any witness to be recalled.

50 That next week, the Roswell BLM office contacted me by telephone to “let me know” that the civil penalties that had been discussed and then were either tabled or rescinded earlier this year were now to be levied.

51 These penalties are for 2 minor violations, but somehow totaled \$920,000.00. I am currently in the administrative review process with the BLM on that issue.

52 This, unless evidence reveals otherwise, will be considered coincidental regardless of the past warnings and “I told you so.”

53 I continued to pursue a re-hearing of this case with the OCC and reviewed the transcript of the hearing of July 19th and July 20th.

54 As previously noted, the OCC recalled an OCD witness from the previous day.

55 The recalled witness for the OCD immediately attempted to show, or introduce to the commission what I assume are pictures of a release or some other less-than-desirable information about some of my leases that she stated “thought would be helpful.”

56 Bill Blanchard communicated that was not the information requested. Mr. Blanchard prohibited the information to be introduced.

57 The recalled witness, contrary to this rebuke, referenced the material in subsequent testimony.

58 I have bought and sold well over 300 wells in the past 6 years. Many, if not most, of those wells were in some form of disrepair or poor overall condition.

59 These properties, when repaired and cleaned up, were marketable.

60 To offer a snap shot of these or any operator's properties without the full consideration of all of the circumstances is not fair and violates any form of consideration of due process.

61 This act on its face demonstrates an intent of retribution by the OCD.

62 Without more evidence, I cannot claim that the culture of the OCD does or does not endorse or allows this type of retribution.

63 I, in good conscience, cannot expect another operator to expose himself and his business to a culture of retribution by appearing or testifying in front of the Commission in a rulemaking hearing.

REQUEST FOR WITNESS

Allison Marks – Former Deputy Director of the OCD

Heather Riley – Director of the OCD and Chairwomen of the OCC

I also request to have the option to cross examine any witness or person of interest that participates in the hearing.

EXHIBIT

Exhibit A - A true and correct copy of Reporters Transcript of Proceedings from July 20th, 2018 Commissioners hearing.

Respectfully submitted,

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