

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

APPLICATION OF HILCORP ENERGY COMPANY
TO AMEND THE WELL DENSITY AND LOCATION
REQUIREMENTS AND ADMINISTRATIVE
EXCEPTIONS OF THE SPECIAL RULES FOR THE
BLANCO-MESAVERDE GAS POOL,
RIO ARRIBA AND SAN JUAN COUNTIES, NEW MEXICO

Case No. 16403

APPLICATION FOR REHEARING

The New Mexico State Land Office (“NMSLO”), by and through its counsel, Andrea Antillon, hereby requests the Oil Conservation Commission (“OCC”) grant a rehearing of the Application of Hilcorp Energy Company to Amend the Well Density and Location Requirements and Administration Exceptions of the Special Rules for the Blanco-Mesaverde Gas Pool (“Application”) pursuant to 19.15.4.25 NMAC.

In support of its Application for Rehearing, the NMSLO states:

I. A rehearing should be granted under 19.15.4.25 NMAC.

1. The OCC issued an Order on the Application of Hilcorp Energy Company, Order No. R-10987-A(2), (“Order”) on December 4, 2018.

2. This Application for Rehearing by the NMSLO is being filed with the OCC within 20 days of the Order, as required by 19.15.4.25 NMAC.

3. The NMSLO should have been considered a party to the Application and has been adversely affected by the Order.

4. The OCC failed to consider any of the legal arguments made by NMSLO at the November 19th hearing and incorrectly denied the NMSLO’s motion for a continuance and opportunity to be heard in the matter.

5. The NMSLO believes the Order is erroneous and therefore requests that Hilcorp Energy Company's ("Hilcorp" or the "Applicant") Application is reheard.

II. The NMSLO should be considered a party to the Application, either as a party to whom notice was required or, in the alternative, as a person who properly intervened in the case.

6. The Commissioner has been duly elected to the office of Commissioner of Public Lands, established under N.M. Const., art. V, § 1; N.M. Const., art. XIII, § 2; and NMSA 1978, §§ 19-1-1 and 19-1-2. The Commissioner is the chief executive officer of the NMSLO and has jurisdiction over lands (hereinafter, "State Trust Lands") granted to the State by the federal government in trust to generate support for public schools and other state institutions, such as hospitals, colleges and prisons.

7. The Commissioner has authority and responsibility to carry out the State's trust responsibility under the New Mexico Enabling Act (Act of Congress of June 20, 1910, 36 Stat. 557, Ch. 310, § 10) (the "Enabling Act") and the compact between the State of New Mexico and the United States set forth in the New Mexico Constitution (N.M. Const., art. XXI, § 9).

8. The Commissioner has authority and responsibility for the State's management, care, custody, control and disposition of State Trust Lands in accordance with state law and the laws under which such lands have been or may be acquired. The Commissioner has (i) authority to manage and lease State Trust Lands and the right to collect all monies due to the State for lease of such lands; and (ii) authority to take all actions necessary to prevent and/or collect damages for wrongful occupation or use of State Trust Lands.

9. The State Trust Land under the custody and control of the Commissioner includes more than 70,000 acres, including over 64,000 acres of full estate, affected by the Application and Order.

10. Under 19.15.4.10 NMAC, the parties to an adjudicatory proceeding include the Applicant, a person to whom statute, rule or order requires notice, and a person who properly intervenes in the case. The NMSLO, under statute and the New Mexico Constitution, should have received notice.

11. Under 19.15.4.12(A)(4)(b) NMAC, an Applicant seeking a special pool order involving matters other than changing the amount of acreage to be dedicated to a well must notify division-designated operators in the pool and division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

12. Notwithstanding the narrow OCD rule above, as one of largest mineral and surface owners in the Blanco-Mesaverde Pool, and with significant State Trust Land affected by the Application, the NMSLO should have been a party that received notice of Hilcorp's application.

13. At the OCC's September 13, 2018 hearing in this matter, the OCC discussed the notice required with regard to the Application. As the Energy, Minerals and Natural Resources Department (EMNRD) attorney who served as counsel for the OCC, Mr. Bill Brancard, stated,¹ in addition to requiring the applicant to notify the other operators in the Blanco-Mesaverde pool, "I think we would prefer you notify the government land managers." *See Reporter's Transcript of Proceedings Commission Hearing September 13, 2018, Case No. 16403, Page 133 lines 2-3.*

14. In accordance with Mr. Brancard's advice and the OCC's request, the Applicant's attorney, Michael Feldewert of Holland and Hart LLP, sent an email to a NMSLO attorney on

¹ By statute, "[t]he attorney general shall be the attorney for the [OCC]." NMSA 1978 § 70-2-4 (1987). Thus, it is the responsibility of the Attorney General to advise the OCC regarding legal matters, and the NMSLO is unaware of any Attorney General commission specifically delegating this statutory responsibility or other delegation of that authority to Mr. Brancard or anyone else. Nonetheless, the OCC indicated that it was seeking legal advice from Mr. Brancard.

Tuesday, November 13, 2018, in which he stated, “This matter is set for a second hearing on Monday, November 19, before the New Mexico Oil Conversation Commission. It has come to my attention that the New Mexico State land Office did not receiver (sic) formal notice of this additional hearing..”

15. After receiving email notification, the NMSLO attempted to review the September 13 hearing notes and exhibits. However, all of the documents were not available on the Oil Conservation Division website until late in the afternoon on Friday, November 16th.

16. As the email notification was not timely, the NMSLO attended the OCC hearing on November 19, 2018 and made an oral motion to continue the case in order to have time to review the exhibits and prepare testimony.

17. Under 19.15.4.10(D) NMAC, “A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.” In this case, NMSLO did not receive notice three business days prior to the date for filing an appearance and should have received a continuance.

18. At the November 19th hearing, the NMSLO objected to the hearing continuing due to the fact that the Applicant had specifically been asked to notify the NMSLO and had not done so in time for the NMSLO to properly enter an appearance. *See Reporter’s Transcript of Proceedings Commissioner Hearing November 19, 2018, Case No. 16403, page 24, lines 15-19.*

19. The Applicant admitted into evidence a copy of a letter sent via first class mail to NMSLO advising it of the September hearing, however, there is no record or testimony of receipt of such letter by the NMSLO. *See Applicant Exhibit 6.*

20. When asked by the OCC, the NMSLO attorney on November 19 and Commissioner of Public Lands, Aubrey Dunn, on December 4 both stated they had not received a copy of the

letter. *See Reporter's Transcript of Proceedings Commissioner Hearing November 19, 2018, Case No. 16403, page 27, lines 20-22.*

21. The NMSLO also explained to the OCC that the Applicant's exhibits were unavailable until the afternoon of Friday, November 16th. *Id. at page 25, lines 16-22.*

22. Contrary to 19.15.4.10(D) NMAC, the OCC denied NMSLO's motions.

III. In the alternative, the NMSLO should be a party to Case No. 16403 because it properly intervened.

23. In the alternative, if the NMSLO is not found to be a person to whom notice was required, it should have been considered a party through intervention.

24. 19.5.4.11(B) NMAC discusses Adjudicatory Proceeding Intervention and states, "The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing."

25. The NMSLO was unable to file a written notice of intervention in the time period required due to not receiving notice of the November 19th hearing until Tuesday, November 13.

26. The NMSLO attended the November 19th hearing and orally requested to intervene and be a party to the hearing. *See Reporter's Transcript of Proceedings Commissioner Hearing November 19, 2018, Case No. 16403, page 172, lines 10-13.*

27. Additionally, 19.15.4.11(C) NMAC states that the, "division examiner or commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment."

28. The NMSLO has standing in this matter as one of the largest surface and mineral owners in the Blanco-Mesaverde Pool.

29. The NMSLO has over 71,000 acres of State Trust Land affected by the application, including 65,000 acres of surface estate and over 70,000 acres of mineral estate. *See Reporter's Transcript of Proceedings Commissioner Hearing November 19, 2018, Case No. 16403, page 26, lines 3-7.*

30. Additionally, the NMSLO has experts in petroleum engineering and geology and significant experience with the subject matter of this application, such that NMSLO's participation would contribute substantially to the prevention of waste, protection of correlative rights and protection of public health or the environment.

31. There is precedent in the OCC to allow persons to appear at an OCC hearing and provide testimony and be deemed an 'intervener' or, at minimum, a 'party' for purposes of a rehearing. *See, e.g., In the Matter of Proposed Amendments to the Commission's Rules on Financial Assurance and Plugging and Abandonment of Wells, 19.15.2, 19.15.8, and 19.15.25 NMAC, Case No. 16078, filed Mar. 28, 2018* (allowing Larry Marker, a person who did not file an appearance to provide testimony in a case before the OCC and file an application for rehearing which the OCC granted).

IV. The Order Issued by the OCC is erroneous and adversely affects the NMSLO.

32. Under 19.15.4.10(D) NMAC, "A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides." In this case, the NMSLO did not receive notice of the November 19th hearing within the required time and therefore made a motion for a continuance at the November 19th hearing, which was denied by the OCC.

33. Due to the denial by the OCC of the NMSLO motion to continue and to intervene, the Order is erroneous and failed to consider required evidence and testimony under the Oil and Gas Act.

34. The OCC did not consider any of the legal arguments made by the NMSLO.

35. Despite the significant public interest in the case, as evidenced by the public comments in the Reporter's Transcript of Proceedings Commissioner Hearing November 19, 2018, Case No. 16403 and the letters from the Governor-Elect and Land Commissioner-Elect requesting additional time to ensure a fair process, Case No. 16078 has been rushed from the start, bypassing, at the request of Applicant, the normal routine of starting with an OCD hearing and instead skipping directly to an OCC hearing. Regardless of the multiple requests for a continuance and stay, the OCC denied all consideration of either option and called a special meeting to sign the proposed Order.

36. Additionally, the EMNRD Cabinet Secretary, Ken McQueen, and the OCD Division Director, who also serves as the OCC Chair, Heather Riley, both were previously employed by WPX Energy. *See 2018 Financial Disclosure Statement filed by Kenley McQueen, Jr., State of New Mexico, Office of the Secretary of State.*² Ms. Riley was the Regulatory Manager for the San Juan Basin for WPX Energy. At the end of 2017 and beginning of 2018, WPX Energy sold its San Juan Basin assets to Logos Resources II, LLC. Logos Resources II, LLC is an operator in the Blanco-Mesaverde Pool, a party to Case No. 16078, and filed an entry of appearance to support Hilcorp's Application, creating potential bias and conflict of interest, and at a minimum the appearance of impropriety.

37. In a November 25, 2018 email communication between Mr. Brancard and the New Mexico Attorney General's office discussing the NMSLO request for the Attorney General to serve as legal counsel to the OCC, Mr. Brancard states, "I forwarded the letter to my current clients but have not gotten a response." *See Exhibit 1.* If the OCC is Mr. Brancard's client, the NMSLO OCC representative should have received a copy of the letter and been asked for his opinion. However,

² A 2018 Financial Disclosure Statement could not be found for Heather Riley, despite the potential legal requirement for her to submit one to the Secretary of State.

the NMSLO OCC representative was not contacted by Mr. Brancard with regard to the request. Therefore, it appears that Mr. Brancard did not consider the NMSLO OCC representative one of his “current clients” despite the fact that he was representing the entire OCC.

38. For the reasons stated above, the Order adversely affects the NMSLO and State Trust Land.

39. NMSLO is one of the largest surface and mineral owners in the Blanco-Mesaverde Pool.

40. Increasing the well density to a 40 acre density or 8 wells per 320 acre unit will result in significant additional surface impacts and damage.

41. The Order allows Applicant (and all operators in the Blanco-Mesaverde Pool) to double the number of wells in the Blanco-Mesaverde Pool. Applicant, by example, would be allowed to increase its well count from approximately 5,000 wells to over 10,000 wells, with the NMSLO unable to have any input in the increase land disturbance or other effects the increase may have on the Trust or Trust beneficiaries.

42. Additionally, the lack of carbon capture on the additional wells will result in waste of methane and in increase in methane in an area that is already considered a methane hotspot.

V. The OCC Order denying NMSLO’s Motion for a Stay is also erroneous.

43. The NMSLO made an oral motion for a stay at the December 4, 2018 OCC hearing and followed this with a written motion filed on December 5, 2018.

44. At the OCC hearing, Commissioners Balch and Dunn indicated that they were inclined to grant the NMSLO’s motion for a 30 day stay, with Commissioner Balch noting the near total absence of available drilling rigs in the San Juan Basin where the unit is located.

45. No objections were made at the time to NMSLO’s motion. In particular, although present at the hearing, the attorneys for the Applicant did not object to the NMSLO’s motion.

46. Notwithstanding the fact that the OCC's stay rule allows the Chair to grant a stay (effective only until the OCC acts on the motion) but does not allow the Chair to deny a stay, see 19.15.4.23(B) NMAC, the Chair of the OCC issued an Order Denying Motion to Stay Approval of Commission Order, Order No. R-10987-A(3), on December 11, 2018.

47. The December 11th Order Denying the Motion to Stay was issued erroneously, and the OCC should rescind the Order and grant to NMSLO Motion to Stay.

VI. The OCC violated the Open Meetings Act and therefore under NMSA 1978 Section 10-15-1 et al. the Order should be invalid.

48. The OCC has violated the Open Meetings Act and therefore, in accordance with NMSA 1978 10-15-3, the Order should be invalid.

49. At the November 19, 2018 OCC the legal advice and representation provided was inadequate and inaccurate and not in accordance with state law.

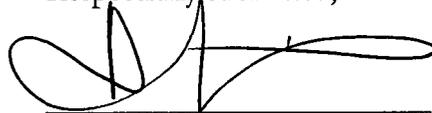
50. The draft order provided to the NMSLO OCC representative for the December 4, 2018 OCC hearing was different than the draft order provided to the Division Director and EMNRD OCC representative. The draft order provided to Commissioners Riley and Balch included additional changes made by EMNRD staff, which the NMSLO OCC representative was not privy to.

51. NMSA 1978 §10-15-1(D) requires the OCC to, "determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body." However, at the January 18, 2018 OCC meeting, the OCC moved to adopt the 2018 Open Meetings Annual Resolution and stated, "The resolution is attached to these minutes." but there is no resolution attached or available on the OCD website.

52. Under 10-15-1(G), "All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting..." However, the OCC has not been timely in posting minutes or exhibits and case files to the OCD website for this case.

WHEREFORE the NMSLO respectfully moves the OCC to grant the NMSLO's Application for Rehearing on the Application of Hilcorp Energy Company to Amend the Well Density and Location Requirements and Administrative Exceptions of the Special rules for the Blanco-Mesaverde Gas Pool and stay the existing order until a rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2018, a copy of the foregoing pleading was served via email upon the following:

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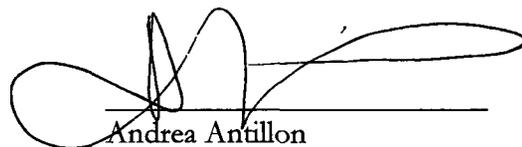
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Andrea Antillon

Ex. 1

Brancard, Bill, EMNRD

From: Brancard, Bill, EMNRD
Sent: Sunday, November 25, 2018 6:41 PM
To: Sally Malave
Subject: Re: [EXT] Re: OCC

I am available tomorrow morning.

Sent from my Verizon Wireless 4G LTE Droid

On Nov 25, 2018 5:28 PM, Sally Malave <smalave@nmag.gov> wrote:

I just re-read Commissioner Dunn's letter, which includes OMA complaint. Generally, those are handled by Open Government and we can certainly process that aspect as we would any other OMA complaint. But I'll need to double check with Cholla and Tania to ensure we're not duplicating efforts and offer a response on all points.

As I mentioned a few days ago, I'm scheduled to meet with Tania tomorrow morning. I have already forwarded Dunn's letter. I'll suggest to her that we conference you in by phone or schedule a time for you to come by to discuss. In any case, we can discuss further tomorrow. Thanks, Bill.

Sally

Sent from my iPad

On Nov 25, 2018, at 5:14 PM, Brancard, Bill, EMNRD <bill.brancard@state.nm.us> wrote:

Sally,

You give me credit for too many ideas. First of all, I have discussed none of these ideas with either my current or my future clients. My suggestion to you a while back was that the AG may want to consider representing the OCC under the next gubernatorial administration. I have not spoken to others about that idea.

The Land Commissioner is now asking the AG to represent the OCC right now and specifically for the special pool order case. I forwarded the letter to my current clients but have not gotten a response. I doubt they would support the idea but I am not involved in policy discussions these days.

The AG, through Cholla, sent a letter to me right before the last hearing and asked questions about notice and other issues. I called Cholla and we finally connected the morning of the hearing. I tried to address the questions. Some of the same issues were raised during the hearing.

At this point, the Commission has made a tentative decision and needs to enter a final order. The Commission asked Hilcorp to prepare a proposed order. They have a regular meeting scheduled on December 13 but they may schedule a special meeting if the proposed order is submitted soon.

As for the transition team, I have heard nada from them. But the Governor-elect did send a letter requesting the Commission continue the hearing until next year. So did many other politicians and citizens. The Commission ignored the requests.

I don't know if I answered your questions. Feel free to ask more.

Bill

Sent from my Verizon Wireless 4G LTE Droid

On Nov 25, 2018 4:22 PM, Sally Malave <smalave@nmag.gov> wrote:
Hi, Bill.

I understand from your last email that you may be asking for (1) the Open Government Division to provide legal counsel on all matters to the OCC going forward, and (2) for the Attorney General, through the Consumer and Environmental Protection Division (Cholla's team), to consider intervening on behalf of the public interest in the drill pad density case. Correct? In connection with either, have you brought this up with Governor-elect's transition team?

Sent from my iPad

On Nov 25, 2018, at 3:34 PM, Brancard, Bill, EMNRD <bill.brancard@state.nm.us> wrote:

If it would be helpful, I can come by Monday to discuss. I have also spoken with Cholla Khoury about this case

Sent from my Verizon Wireless 4G LTE Droid

On Nov 21, 2018 12:33 PM, Sally Malave <smalave@nmag.gov> wrote:
Alright. Thanks.

Sent from my iPad

> On Nov 21, 2018, at 12:32 PM, Brancard, Bill, EMNRD <bill.brancard@state.nm.us> wrote:

>

> I don't recall that it ever did represent the OCC.

>

> -----Original Message-----

> From: Sally Malave <smalave@nmag.gov>

> Sent: Wednesday, November 21, 2018 12:31 PM

> To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>

> Subject: Re: [EXT] Re: OCC

>

> In that vein, do you recall when and why the OAG stopped representing OCC? Thanks.

>

> Sent from my iPad

>

>> On Nov 21, 2018, at 12:18 PM, Brancard, Bill, EMNRD <bill.brancard@state.nm.us> wrote:

>>

>> Thanks. You might want to mention that we have discussed this issue before.

>>

>> Happy Thanksgiving to the Malave/Giblin clan! Enjoy the holiday, Bill

>>

>> -----Original Message-----

>> From: Sally Malave <smalave@nmag.gov>

>> Sent: Wednesday, November 21, 2018 12:08 PM

>> To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>

>> Subject: [EXT] Re: OCC

>>

>> Thanks, Bill. I have forwarded to Chief Deputy Tania Maestas to ensure it gets before the AG timely.

>>

>> Happy Thanksgiving to you, Monica and the entire Brancard Ontiveros clan.

>>

>> Sent from my iPad

>>

>>> On Nov 21, 2018, at 9:58 AM, Brancard, Bill, EMNRD <bill.brancard@state.nm.us> wrote:

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>>> <Scanned from a Xerox Multifunction Printer.pdf>