

**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.**

**CASE NOS. 16115 & 16116
Order No. R-14876
(De Novo)**

**CHISHOLM'S MOTION TO EXCLUDE CERTAIN OF PREMIER'S
LATE-FILED EXHIBITS**

Pursuant to 19.15.4.13(B)(2) NMAC, Chisholm Energy Operating, LLC ("Chisholm (OGRID No. 327137)) moves the Oil Conservation Commission to exclude certain of Premier's exhibits as untimely. Premier filed and served its exhibits on February 12, 2019, when it should have filed and served them with its prehearing statement on February 7, 2019. For the reasons stated below, Premier's exhibits, except those which were derived from data produced by Chisholm in response to the Commission's subpoena, should be excluded from the hearing.¹

Under 19.15.4.13(B)(2) NMAC, the Commission "may exclude . . . exhibits [a] party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit." Premier cannot meet either standard excusing late-filed exhibits.

¹ Premier has not numbered its numerous exhibits, making it difficult to identify them with specificity. Based on Premier's prehearing statement, it appears that the exhibits Chisholm seeks to exclude are those which Premier intended to present through Mr. Dan Jones and Mr. Ken Jones and which are not derived from the log data produced by Chisholm.

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First, the exhibits Chisholm asks the Commission to exclude are not rebuttal exhibits. In its prehearing statement, Premier, the applicant for de novo hearing, set out its statement of the case and summarized the exhibits it intended to present in support of its direct theory of the case. All the exhibits referenced in the prehearing statement were filed on February 12th, long after the Commission's deadline on February 7th. By definition, those are not rebuttal exhibits because they are intended to support Premier's initial presentation of its direct case.

Second, Premier has not and cannot establish a good-cause basis for failing to disclose within the Commission's deadline the exhibits intended to be presented by Ken Jones and Dan Jones—*i.e.*, all the exhibits which could have been prepared within the deadline and do not rely on data produced by Chisholm.

Premier gives three reasons to justify its tardy filing: (1) Premier had a short window of time to review Chisholm's data after the Commission's subpoena was issued; (2) Chisholm's production was delayed by negotiation of a confidentiality order; and (3) the filing and service of the exhibits was delayed because counsel for Premier had computer issues. While those reasons might excuse Premier's late-filed exhibits derived from the data produced by Chisholm in response to the subpoena, they do not justify or explain why the numerous other exhibits—unrelated to Chisholm's data production—also were filed and served days late.

Accordingly, all of Premier's decline curve analyses, topographical and regional maps, analysis of regional production data, City of Carlsbad water well maps and city minutes, hand-drawn area maps, Devon presentation slides, and Division production data, among other proposed exhibits, could have been prepared weeks or months ago, and timely filed and served within the Commission's deadline. The information contained in these exhibits were either already in Premier's possession or the data and information was readily publicly available.

Premier offers no justification or excuse for its late filing and failure to meet the Commission's disclosure deadline as to these exhibits.

These cases were originally set to be heard by the Commission on January 10, 2019. In response to Premier's motion for continuance, however, the Commission continued these cases to February 14, 2019. Premier had asked for more time because it needed "to coordinate with the additional expert witness." *See* Premier's Mot. for Continuance, filed 1/9/19. Accordingly, its "[p]reparation of the engineering and geological aspects of the case will not be finalized by its expert witness in time for the hearing." *Id.* (emphasis added). In other words, Premier needed a continuance to get its outside expert witnesses up to speed; it did not need more time to prepare its own witnesses and exhibits.

After the Division entered Order No. R-14876 on September 18, 2018, Premier filed an application for de novo hearing on October 11, 2018. Premier has had more than four months to prepare its exhibits in anticipation of this hearing. The exhibits Chisholm seeks to exclude were either available to Premier well in advance of the Commission's deadline (*i.e.*, the documents were already in existence and possessed by Premier) or are derived from readily available public data and could have been prepared well in advance of the Commission's filing deadline.

To preserve the integrity of the Commission's rules and deadlines, Premier's late-filed exhibits should be excluded from the hearing.

Respectfully Submitted,

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**ATTORNEYS FOR CHISHOLM ENERGY
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2019, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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A handwritten signature in black ink, appearing to be 'A.G. Rankin', written over a horizontal line.

Adam G. Rankin