

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

2006 MAY 3 PM 3 08

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY FIELD SERVICES, LP FOR
APPROVAL OF AN ACID GAS INJECTION WELL
LEA COUNTY, NEW MEXICO

CASE NO. 13589

SECOND MOTION TO DISMISS

Randall Smith, Dean “Beach” Snyder and AC Ranches Partnership, (“Opponents”), move, for the second time, that the Commission enter its order dismissing the Application filed on behalf of Duke Energy Field Services, LP for the reason that the Applicant failed to provide notice of the Application as directed by the Division and in accordance with the Division’s rules.

BACKGROUND

By correspondence dated March 24, 2006, after the March 13, 2006 hearing on the Application, the following mineral interest owners in the W/2 NE/4, NW/4 of Section 30, T18S, R37E notified the Commission’s chairman of their objection to Duke Energy’s Application and the lack of notification to them: Madison M. Hinkle, Randolph M. Richardson, Morris E. Schertz, Rolla R. Hinkle, III, Oscura Resources, Inc., R.R. Hinkle Company, Inc. (*See* correspondence dated March 24, 2006, Exhibit A.) These mineral interest owners stated their mineral interests have value for oil and gas development that would necessarily be adversely affected by the trespass of hydrogen sulfide and carbon dioxide acid gas from Duke Energy’s injection well proposed to be located only 660’ from their acreage. As a consequence of the lack of notification to them, these mineral interest owners were denied the opportunity to participate in the Commission hearing and to protect their interests. These circumstances require the dismissal of Duke Energy’s Application.

Duke Energy's original C-108 Administrative Application for Authorization to Inject for its proposed acid gas injection well was filed with the Division on September 13, 2005. On September 16, 2005, the Division's UIC Director outlined the notice that Duke Energy would be required to make:

"Division rules allow the examiner or the director to require additional notice of any application as needed. In this instance, I will recommend the following notice to be provided to affected parties within a one mile radius of the well bore. This includes all tracts that are wholly or partially contained within this one mile radius. For each of these tracts, the Division designated operator of record for all depths from the intended injection interval to the surface should be notified...If a tract does not have an operator, then the lessees must be notified. If no lessees, then the mineral interest owners must be notified..." (emphasis added)

During the course of the hearing on February 9, 2006 on Duke Energy's Application, the Applicant represented through its witnesses and exhibits, that the ownership of the W/2 NE/4, NW/4 of Section 30 immediately to the north of the proposed injection facility was "Unknown". (See Duke Energy Field Services Exhibit No. 1, C-108 Section V, Map No. 3; see, also, Opponent's Exhibit No. 1). The Affidavit of Notice included with Duke Energy's C-108 Application also established that the referenced mineral interest owners were not provided with notice of the Application. A single phone call to an abstractor in Lea County would have yielded the identities of the mineral interest owners in Section 30. It is clear then that the Applicant failed to exercise even a modicum of due diligence to determine the ownership of both the surface and the minerals in the acreage immediately adjoining its acid gas injection facility to the north. The Applicant's failure to provide notice is a direct violation of the Division's rules and the UIC Director's instructions.

The parameters for proper and required notice are set forth in the Division's rules, first at Rule 1207. That rule requires:

"(A) The Division shall publish notice of any adjudicatory hearing...stating:

(6.) A reasonable identification of the adjudication subject matter that alerts persons who may be affected if the Division grants the application[.]” (emphasis added.)

Rule 1210 then requires applicants to provide notice as follows:

(A.) Applicants for the following adjudicatory hearings before the Division or Commission shall give notice, in addition to that required by 19.15.14.1204 NMAC, as set forth below:...

(9.) Adjudications not listed above. Notice shall be given as required by the Division.

(C.) At the hearing, the applicant shall make a record, either by testimony or affidavit signed by the applicant or its authorized representative, that: (a) the notice provisions of 19.15.14.1207 NMAC have been complied with; (b) the applicant has conducted a good faith diligent effort to find the correct address of all person entitled to notice; and (c) pursuant to 19.15.14.1207 NMAC notice has been given at that correct address required by ...[Rule 1207]. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

It is indisputable that the mineral interest owners, Madison M. Hinkle, et al., are “persons who may be affected” within the meaning of Rule 1207-A(6). It is also indisputable that Duke Energy failed to give notice “as required by the Division” pursuant to Rule 1210-A(9), or that the provisions of Rule 1207 had been complied with, or that the Applicant conducted a good faith diligent effort to locate those persons who may be affected by the Application as required by Rule 1210(C). *See* Order No. R-11855; Case No. 12905, *Application of Pronghorn Management Corporation for Approval of a Salt Water Disposal Well, Lea County, New Mexico*. These failures have caused the very purposes of the Division’s notice rules to be thwarted. As a consequence, the mineral interest owners were deprived of the opportunity to appear at the Commission or to otherwise take steps necessary to protect their interests, interest that they have identified as being adversely affected. This failure results in a denial of fundamental due

process. For these reasons, the Application of Duke Energy Field Services, LP must be dismissed.

Respectfully submitted,

By: J. Scott Hall
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Miller Stratvert P.A.
Attorneys for Randall Smith, Dean "Beach"
Snyder and AC Ranches Partnership
Post Office Box 1986
Santa Fe, New Mexico 87504-1986

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 3 day of May, 2006 as follows:

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MADISON M. HINKLE
PETROLEUM LANDMAN

ROSWELL, NEW MEXICO 88202-2292

March 24, 2006

New Mexico Oil Conservation Commission
Attn: Mr. Mark Fesmire, Chairman
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: NMOCC Case No. 13589; Application of Duke Energy Field Services, LP for Approval of an Acid Gas Injection Well, Lea County, New Mexico

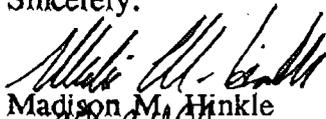
Dear Mr. Fesmire:

We are the owners of 91.1667% of the mineral interest underlying the W1/2NE1/4, NW1/4 of Section 30 T-18-S, R-37-E and the NE1/4, E1/2NW1/4 Section 25 T-18-S, R-36-E in Lea County. We are also Petroleum Landman by profession and are very familiar with the industry. We only this week became aware of the proposal of Duke Energy Field Services to inject hydrogen sulfide and carbon dioxide acid-gas in to the Bone Spring formation through a well located only 660' from our property in the SW/14 of Section 30 T-18-S, R-37-E. Although we are interest owners of record, Duke Energy Field Services did not notify us of their proposal or communicate with us in any way. We feel that we have been denied the opportunity to participate in the Commissions hearing and to protect our interests.

We understand that the significant volumes of acid-gas Duke Energy proposes to inject underground will necessarily trespass onto our mineral interests in Section 30. We believe the area definitely has potential for further oil and gas development and that our mineral interests will be adversely affected by Duke Energy's proposed operation if approved by the Commission. We specifically deny that Duke Energy has the right to utilize our lands in any way.

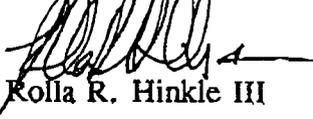
We strenuously object to Duke Energy's application for underground injection of hazardous substances and ask that it be denied.

Sincerely:

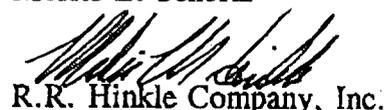

Madison M. Hinkle


Randolph M. Richardson


Morris E. Schertz


Rolla R. Hinkle III


Oscura Resources, Inc.


R.R. Hinkle Company, Inc.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NM Oil Conservation Commission
 ATTN: Mr. Mark Fesmire, Chairman
 1220 South St. Francis Drive
 Santa Fe, NM 87505

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
John A. Lockers Addressee

B. Received by (Printed Name) C. Date of Delivery
 3-27

D. Is delivery address different from Item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
 (Transfer from service label) 7002 0460 0000 2470 5764