

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: )  
APPLICATION OF DUKE ENERGY FIELD )  
SERVICES, LP, FOR APPROVAL OF AN )  
ACID GAS INJECTION WELL, LEA COUNTY, )  
NEW MEXICO )

CASE NO. 13,589

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING (Closing of Session for Deliberation)

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

March 13th, 2006

Santa Fe, New Mexico

2006 MAR 23 PM 12 06

This matter came on for closing of session for deliberation before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Monday, March 20th, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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## I N D E X

March 20th, 2006  
Commission Hearing (Closing of Session for Deliberation)  
CASE NO. 13,589

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## A P P E A R A N C E S

## FOR THE COMMISSION:

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Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
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## FOR THE APPLICANT:

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110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR  
and  
OCEAN MUNDS-DRY

## FOR THE DIVISION:

CHERYL O'CONNOR  
Assistant Counsel, NMOCD  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

\* \* \*

## ALSO PRESENT:

Bobby Gonzales  
Safety Consultant, Maddox Station  
Xcel Energy  
P.O. Box 1261, Suite 2503  
Amarillo, Texas 79170

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:00 a.m.:

3           CHAIRMAN FESMIRE: This is a continuation of  
4 Cause Number 13,589, OCD -- in the matter of the hearing  
5 called by the Oil Conservation Division for the purpose of  
6 considering the Application of Duke Energy Field Services,  
7 LP, for an acid gas injection well in Lea County, New  
8 Mexico.

9           This hearing has been continued from Monday,  
10 March 13th. Let the record reflect that it's 9:00 a.m. on  
11 Monday, March 20th.

12           The attorneys present -- Would you like to re-  
13 enter your appearance, just so that the record reflects  
14 that you're here?

15           MR. CARR: May it please the Examiner, William F.  
16 Carr with Holland and Hart, L.L.P. We represent Duke  
17 Energy Field Services.

18           MS. O'CONNOR: And Cheryl O'Connor representing  
19 the Oil Conservation Division.

20           MR. GONZALES: Mr. Chairman, members of the  
21 Commission, Bobby Gonzales, Xcel Energy.

22           CHAIRMAN FESMIRE: Okay. Let the record reflect  
23 that Mr. Hall, the attorney for the Protestants in this  
24 case is not present, but I guess he's the only party that  
25 participated that isn't present.

1           At this time it's the intention of the Chair to  
2 go into executive session and discuss this issue. Before  
3 we do that, is there any comments from the Commission,  
4 anything that they think that we need to address before we  
5 do that?

6           COMMISSIONER BAILEY: Not from me.

7           COMMISSIONER OLSON: Yeah, Mr. Chair, I've just  
8 got a question. I know we've got a document that came last  
9 week on closing statements, and I was a little confused. I  
10 wasn't -- I thought the hearing record was closed, so I'm  
11 not sure if we're -- if that's something we should be  
12 considering. Because it also included -- it looked like  
13 additional testimony from Alberto Gutiérrez. So I wasn't  
14 sure if this was kind of outside the scope of what we need  
15 to be looking at, at the moment, or not.

16           CHAIRMAN FESMIRE: At the close of the hearing on  
17 the 13th I asked if there were any additional matters that  
18 needed to come before the Commission at that point, and I'm  
19 going to ask the court reporter if he's got the last -- the  
20 very last entry of last Monday's hearing, whether that was  
21 what we communicated or not.

22           COURT REPORTER: I'm sorry, Mr. Chairman, I don't  
23 have that with me.

24           CHAIRMAN FESMIRE: Okay, it's my --

25           MR. CARR: I do have a transcript of it, Mr.

1 Chairman --

2 CHAIRMAN FESMIRE: Okay.

3 MR. CARR: -- if you'd like to see it.

4 CHAIRMAN FESMIRE: If I could, sir.

5 It looks like, according to the transcript -- It  
6 looks like we concluded the proceedings without asking if  
7 there was a follow-up or closing statements, so I don't  
8 think it would be inappropriate for us to go ahead and  
9 consider the closing statement.

10 As for additional testimony, there is the  
11 affidavit of Mr. Gutiérrez concerning the H<sub>2</sub>S contingency  
12 plans -- no, that doesn't concern the H<sub>2</sub>S contingency  
13 plans.

14 COMMISSIONER OLSON: And there's the -- I think  
15 there's that, plus the proposed draft, which I don't think  
16 we have available to us at the hearing.

17 MR. CARR: Mr. Chairman, we're not attempting to  
18 put the H<sub>2</sub>S contingency plan into the exhibit file, and it  
19 isn't an attachment to the closing statement. And the  
20 closing statement is just that, it's a statement. I have  
21 it.

22 CHAIRMAN FESMIRE: Okay, thank you.

23 MS. O'CONNOR: And Mr. Chairman, if I may, we  
24 believe that the affidavit is some additional evidence, I  
25 mean it is additional testimony. The OCD has not had an

1 opportunity to be able to respond to the additional  
2 testimony, but we would like to state for the record, if it  
3 would be appropriate or we would be allowed to do so, to  
4 make a statement.

5 By and large, it seems that in the closing  
6 statement that there is a concern that the OCD is making a  
7 recommendation that only a horizontal well be permitted,  
8 and that is not the OCD's position. They are not  
9 recommending -- the OCD is not recommending that this  
10 permit not be granted, but only be granted for a horizontal  
11 permit. There were some comments by Mr. Will Jones as to  
12 the possibility of a horizontal well, but it is not the  
13 OCD's recommendation that only a horizontal well be  
14 permitted.

15 CHAIRMAN FESMIRE: So the OCD wouldn't object to  
16 a vertical well and the surface pipelines required to  
17 service that?

18 MS. O'CONNOR: No, Mr. Chairman.

19 CHAIRMAN FESMIRE: Okay. David?

20 (Off the record)

21 CHAIRMAN FESMIRE: Okay, at this time the closing  
22 will be part of the record, but the additional testimony  
23 will not be accepted in the record and will not be  
24 considered by the Commission in its decision.

25 With that, the Chair would accept a motion to go

1 into closed session.

2 COMMISSIONER OLSON: Well, I guess I have a  
3 question. Do we need to go into closed session for  
4 deliberations? I guess I --

5 MR. BROOKS: That's up to the Commission. The  
6 Commission can deliberate either in public session or in  
7 closed session on an adjudicatory case.

8 CHAIRMAN FESMIRE: Would there be a preference of  
9 the Commission?

10 COMMISSIONER OLSON: I mean, what I prefer is to  
11 be in open session. I'm used to a lot of the adjudications  
12 we worked through at the Water Quality Control Commission,  
13 and just -- the Commission doesn't normally in that case go  
14 into executive session except for actual legal matters or  
15 personnel-type issues.

16 COMMISSIONER BAILEY: But the OCC has --

17 COMMISSIONER OLSON: I know.

18 COMMISSIONER BAILEY: -- historically gone  
19 into --

20 COMMISSIONER OLSON: That's why I --

21 COMMISSIONER BAILEY: -- executive session, and I  
22 believe -- Maybe it wouldn't particularly apply to this  
23 case, but I think it allows a more free-flowing  
24 conversation among the Commissioners for developing their  
25 order, to go into executive session.

1           COMMISSIONER OLSON: I mean, I don't really have  
2 a problem going and doing it in open session either, so  
3 let's -- I don't know.

4           CHAIRMAN FESMIRE: Commissioner Bailey, you've  
5 got the most experience?

6           COMMISSIONER BAILEY: I hate to set a  
7 precedent --

8           COMMISSIONER OLSON: Uh-huh.

9           COMMISSIONER BAILEY: -- because once you begin  
10 something then there could be times that it would be a  
11 little more sensitive in this session. So I think that we  
12 should continue our closed sessions for deliberations of  
13 non-adjudicatory --

14          MR. BROOKS: Adjudicatory.

15          COMMISSIONER OLSON: Okay, whatever it is.

16          (Laughter)

17          COMMISSIONER OLSON: Well, let me -- I would just  
18 ask our counsel, how does that work under the Open Meetings  
19 Act?

20          MR. BROOKS: Well, the Open Meetings Act, of  
21 course, says that you can go into executive session for  
22 matters that are permitted by law, which includes  
23 deliberation in adjudicatory cases.

24                 Now, I think you're correct, many of the state  
25 boards and commissions do not customarily go into executive

1 session in adjudicatory cases. However, I think it's well  
2 recognized in New Mexico that a board can do so, as long as  
3 it's an adjudicatory case, it's not a rule-making case or  
4 certain other matters that are required to be done in  
5 public.

6 CHAIRMAN FESMIRE: Does that satisfy your --

7 COMMISSIONER OLSON: Well, I don't know. I kind  
8 of always -- I mean, I'll admit I personally just like to  
9 see a lot of open discussion so that the public gets to see  
10 what the rationale is for the --

11 CHAIRMAN FESMIRE: It would save a statement on  
12 the record afterwards. But also, you know, in order to  
13 have the discussion sometimes the Commissioners will  
14 establish a straw man and consider it, and I would hate for  
15 that to be on the record --

16 COMMISSIONER OLSON: Uh-huh.

17 CHAIRMAN FESMIRE: -- to be misconstrued. In  
18 some cases I know there are times when, to make a point,  
19 I'll make a statement that I don't agree with but try to  
20 draw out discussion, and I would think that it would be  
21 better that we be allowed to state on the record our  
22 reasons without having to then explain, you know, the  
23 discussion-stimulating premises that we might have put  
24 forward --

25 COMMISSIONER OLSON: Uh-huh.

1 CHAIRMAN FESMIRE: -- so...

2 COMMISSIONER BAILEY: And the orders always do  
3 explain how we arrived at our --

4 COMMISSIONER OLSON: Right.

5 COMMISSIONER BAILEY: -- decision.

6 COMMISSIONER OLSON: Well, I guess I'll go along  
7 with it this time. I just still have -- I might reserve  
8 that for a later date, to think about that some more.

9 CHAIRMAN FESMIRE: Well, at this time --

10 COMMISSIONER BAILEY: I move that we go into  
11 executive session for the purpose of considering Case  
12 13,589.

13 COMMISSIONER OLSON: Second.

14 CHAIRMAN FESMIRE: Okay, all those in favor?

15 COMMISSIONER BAILEY: Aye.

16 CHAIRMAN FESMIRE: Aye.

17 COMMISSIONER OLSON: Aye.

18 CHAIRMAN FESMIRE: Opposed?

19 Let the record reflect that at 9:11 we're going  
20 into executive session for the single purpose of discussing  
21 Cause Number 13,589, the Application of Duke Energy Field  
22 Services, LP, for an acid gas injection well in Lea County,  
23 New Mexico. Thank you very much.

24 (Off the record at 9:11 a.m.)

25 (The following proceedings had at 10:17 a.m.)

1           CHAIRMAN FESMIRE: At this time we will reconvene  
2 a general session. Let the record reflect that the Oil  
3 Conservation Commission of the State of New Mexico has been  
4 meeting in closed session to discuss Cause Number 13,859,  
5 that Cause Number 13 -- or, excuse me, -589 -- that Cause  
6 Number 13,589 was the only thing that we discussed and that  
7 we have reached a resolution on that cause.

8           We have instructed the counsel to draft an order  
9 granting the Application as amended by the OCD  
10 recommendations. Prior to beginning injection, Applicant  
11 shall have an OCD-approved surface discharge plant in place  
12 and OCD-approved H<sub>2</sub>S/CO<sub>2</sub> contingency plan, including  
13 direct-link alarms to the Randy Smith home, the Maddox  
14 Station and the Linam plant; the Maddox and the Linam plant  
15 alarms shall be audible and visible alarm systems; the plan  
16 shall include continuous pressure monitoring and sampling  
17 of the pipeline microannulus; all road crossings shall have  
18 wind socks and shall be constructed so as to prevent damage  
19 from routine road maintenance; additional H<sub>2</sub>S monitoring  
20 points shall be added east of the injection well; the  
21 pipeline shall be constructed and maintained and inspected  
22 as if it were subject to DOT requirements for comparable  
23 pipelines; and OCD will require a compliance report prior  
24 to injection and at regular intervals thereafter.

25           My reasons for the decision were that Mr. Root

1 and the OCD testimony showed that the plan and the proposed  
2 pipeline and injection well to be protective of public  
3 health and the environment, that it was an environmentally  
4 superior means of disposing waste at the plant by reducing  
5 emissions and sequestering greenhouse gases, and it would  
6 facilitate continuous operation of the plant and production  
7 of New Mexico's resources.

8 Commissioner Bailey, did you have anything to add  
9 to that?

10 COMMISSIONER BAILEY: Those were my main concerns  
11 also. I believe that this order will be protective of the  
12 environment and the people in the vicinity.

13 CHAIRMAN FESMIRE: Commissioner Olson?

14 COMMISSIONER OLSON: Yes, I think I'd agree with  
15 the reasons that you had stated. I think this is an  
16 important mechanism to sequester these greenhouse gases  
17 that are now just emitted into the atmosphere at the plant.  
18 And so I think I agree with your rationale, and I think as  
19 well that this can be operated in a mechanism that is  
20 protective of public health.

21 CHAIRMAN FESMIRE: At this time we will direct  
22 counsel to draft an order that reflects the Commission's  
23 decision. That order will be reviewed and hopefully  
24 accepted at the regularly scheduled April 20th OCC meeting.  
25 So at this time we will continue this cause till April

1 20th, at the regularly scheduled OCC meeting.

2 And with that the Chair would accept a motion to  
3 adjourn.

4 COMMISSIONER BAILEY: I move we adjourn.

5 COMMISSIONER OLSON: Second.

6 CHAIRMAN FESMIRE: All those in favor?

7 COMMISSIONER BAILEY: Aye.

8 COMMISSIONER OLSON: Aye.

9 CHAIRMAN FESMIRE: Let the record reflect that  
10 the meeting was adjourned at 10:21 a.m.

11 Thank you all very much.

12 (Thereupon, these proceedings were concluded at  
13 10:21 a.m.)

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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL March 21st, 2006.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006