

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

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

CASE NO. 13589

RESPONSE TO SECOND MOTION TO DISMISS

2008 MAY 16 PM 1 09

Duke Energy Field Services, LP ("Duke") responds to Randall Smith, Dean "Beach" Snyder and AC Ranches Partnership ("Opponents") Second Motion to Dismiss and states the Commission should deny Opponents' Second Motion to Dismiss for the following reasons:

1. The New Mexico Oil Conservation Commission issued Order R-12546 granting Duke's application for approval of an acid gas injection well on May 5, 2006. Therefore, this motion is moot and the Commission need not consider it.

2. Opponents assert that certain mineral interest owners in Section 30, Township 18 South, Range 37 East were not provided notice of the application and hearing. Opponents do not show they have standing to argue the claims of other mineral interest owners. *Key v. Chrysler Motors Corp.*, 121 N.M. 764, 918 P. 2d 350, 354 (N.M. 1996)("Standing is a doctrine requiring that the claimant must have a personal stake in the outcome of a case; the claimant must allege both injury in fact and a traceable causal connection between the claimed injury and the challenged conduct.") Thus, this Motion may be dismissed as Opponents do not raise claims that they may legally assert in the first instance.

3. Duke has shown that it gave proper notice pursuant to Division rules and the additional requirements imposed by the Division. Mr. Alberto Gutierrez, witness

for Duke, testified at the hearing on this matter, that notice was given to "affected persons" as defined by Division rules within a one-mile radius of the wellbore. *See* Tr. pp.169-170. Notice was also published in the *Hobbs Sun* as required by Division Rules. *See* NMAC 19.15.9.701 (2005). Accordingly, the Commission found in Order R-12546 that "notice has been given of the application and the hearing of this matter."

For these reasons, Opponents Second Motion to Dismiss should be denied.

**Respectfully submitted,**

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**ATTORNEYS FOR DUKE ENERGY FIELD  
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### **CERTIFICATE OF SERVICE**

I certify that on May 16, 2006 I served a copy of the foregoing document to the following by

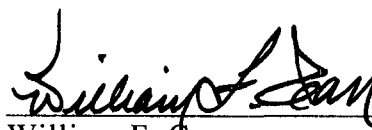
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