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

IN THE MATTER OF THE APPLICATION OF CHESAPEAKE ENERGY CORPORATION FOR APPROVAL OF A 160-ACRE NON-STANDARD SPACING AND PRORATION UNIT FOR COMPULSORY POOLING CHAVES COUNTY, NEW MEXICO

CASE NOS. 14222 THRU 14231

CHESAPEAKE ENERGY CORPORATION 'S RESPONSE TO COG OPERATING LLC'S MOTION TO DISMISS

Chesapeake Energy Corporation ("Chesapeake") by its attorneys, Kellahin & Kellahin, for its response to the motion to dismiss filed by COG Operating LLC ("COG") states:

Last year, COG filed and obtained approval of fourteen application for permits to drill of which thirteen were based upon Division Form C-108 in which COG falsely represented that it had an interest in each of the 40-acre tracts within the applicable 160-acre spacing units. In September of this year (2008), COG filed fourteen compulsory pooling applications.

On the same day as COG, Chesapeake filed applications to cancel COG's APDs because they were prematurely obtained before COG had reach a voluntary agreement or obtained compulsory pooling orders. In addition, Chesapeake filed competing compulsory pooling application that COG now seeks to have dismissed by the Division. Chesapeake needs these compulsory pooling application so that, if successful, it can properly sign the Form C-102 certification and obtain approved APDs.

There is nothing wrong with what Chesapeake has done. The New Mexico Oil Conservation Commission ("Commission") has already decided against COG's position in the Pride vs. Yates Case, 13153 (De Novo) by ruling as follows:

> "28. As the Commission stated in Order No. R-11700-B: An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused" See Order R-12108-A, dated August 12, 2004

Despite the clear directions of this Commission order, COG is confused. In an apparent attempt to disguise its confusion, COG wants to misdirect the Division away from COG falsely represented C-102s.

To insure that operators would not obtain APDs until they had reach a voluntary agreement or obtained compulsory pooling orders, the Commission by Order R-12343-E, dated March 16, 2007,[1] directed the Division to change Division form C-102 concluding as a legal matter that:

> "33.To prevent further misunderstandings in the interpretation of the Commission's orders, particularly in Case No. 13153, *Application of Pride Energy Company, etc.,* Order No. R-12108-C and *Application of TMBR/Sharp, Inc.,* Order R11700-B, the Commission approves of the language on Division Form C-102, field 17, concerning the operator's certification and asks the Division to continue its use and to notify the Commission if it plans to discontinue its use. That certification states "I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief and that the organization either owns a working interest or unleased mineral interest in the land, including the proposed bottomhole location, or has a right to drill this well at this location pursuant to a contract with an owner of such mineral or working interests or in a voluntary pooling agreement or compulsory pooling order hereto entered by the Division". Case Nos. 13492 and 13493 (De Novo) Order No. R-12343-E Page 6

In addition, "An operator shall not file an application for permit to drill or drill a well unless it owns an interest in the proposed well location or has a right to drill the well as stated in Division Form C-102" See Finding 19 of Order R-12343-B (Case 13492 and 134939denovo). While the certification appears to have been written with vertical wellbores in mind, it seems reasonable to apply the certification to horizontal wellbores by interpretation that the operator must have an interest in any tract penetrated by a horizontal wellbore. Even though COG may have been pursing a voluntary agreement, it cannot sign the certification until that pursuit has been accomplished with a signed voluntary agreement or obtaining a compulsory pooling order. Only then, can the operator sign the certification "pursuant to" a contact etc.

[1] a dispute between Samson, Kaiser-Frances and Mewbourne to cancel two APDs obtained by

The matters raised by COG have already been adjudicated before the Commission based upon the orders in the Yates-Pride Case (Order R-12108-C) and in the TMBR/Sharp-Ocean Case (Order R-11700) and in the Chesapeake-Sampson Cases (Orders R-12343, etc.) All have ruled against COG position in its motion to dismiss.

Competing compulsory pooling application should not be decided based upon which applicant was first to obtain an approved APD. COG's motion to dismiss is an attempt to block Chesapeake from having its cases heard by the Division--a practice that is not permitted by the Division:

> "(17) The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator *of the* wells and of the units under the compulsory pooling procedures. The Division does not want to decide this case based on a race to obtain an APD. Doing so would encourage potential operators to file for APD's strategically, to block other potential operators." See Order R-12451

Chesapeake requested that the Division deny COG's motion to dismiss without further argument.

Respectfully submitted,

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Chesapeake and Chesapeake's attempt to compulsory pool those parties.

CERTIFICATE OF SERVICE

I certify that on October 21, 2008 I served a true and correct copy of the foregoing pleading by hand delivery or facsimile to the following:

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