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2010 FEB 12 P 3:47

February 12, 2010

Ms. Florene Davidson  
New Mexico Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**Hand Delivered**

**Re: NMOCD Case No. 14365 (De Novo): Application of COG Operating for Designation of a Non-Standard Spacing Unit and for Compulsory Pooling, Eddy County, New Mexico**

**NMOCD Case No. 14366: Application of COG Operating for Designation of a Non-Standard Spacing Unit and for Compulsory Pooling, Eddy County, New Mexico**

**NMOCD Case No. 14323 (De Novo): Application of Chesapeake Energy Corporation for Cancellation of a Permit to Drill Issued to COG Operating LLC, Eddy County, New Mexico**

**NMOCD Case No. 14382: Application of Chesapeake Energy Corporation for Cancellation of a Permit to Drill Issued to COG Operating LLC, Eddy County, New Mexico**

Dear Ms. Davidson:

Enclosed for filing is the original and six copies of COG Operating LLC's Motion to Dismiss Case Nos. 14323 and 14382 for Failure to Provide Notice of New Issues.

Thank you

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**REPLY TO:**

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Ms. Florene Davidson  
February 12, 2010  
Page 2

Very truly yours,

A handwritten signature in cursive script that reads "Karen Williams".

Karen Williams  
Assistant to J. Scott Hall

JSH:kw

cc: Earl DeBrine, Esq.  
W. Thomas Kellahin, Esq.  
James Bruce, Esq.

00162267

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

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2010 FEB 12 P 3:47

**APPLICATION OF CHESAPEAKE ENERGY  
CORPORATION FOR CANCELLATION OF A  
PERMIT TO DRILL ISSUED TO COG OPERATING  
LLC, EDDY COUNTY, NEW MEXICO**

**DE NOVO  
CASE NO. 14323**

**APPLICATION OF COG OPERATING LLC FOR  
DESIGNATION OF A NON-STANDARD SPACING  
UNIT AND FOR COMPULSORY POOLING, EDDY  
COUNTY, NEW MEXICO**

**DE NOVO  
CASE NO. 14365**

**APPLICATION OF COG OPERATING LLC FOR  
DESIGNATION OF A NON-STANDARD SPACING  
UNIT AND FOR COMPULSORY POOLING, EDDY  
COUNTY, NEW MEXICO**

**CASE NO. 14366**

**APPLICATION OF CHESAPEAKE ENERGY  
CORPORATION FOR CANCELLATION OF A  
PERMIT TO DRILL ISSUED TO COG OPERATING  
LLC, EDDY COUNTY, NEW MEXICO**

**CASE NO. 14382**

**COG OPERATING LLC'S REPLY  
PURSUANT TO ITS MOTION TO STAY OR CONTINUE  
PENDING COMPLETION OF A RELATED RULEMAKING**

COG Operating LLC, ("COG"), by and through its undersigned attorneys, Montgomery & Andrews, P.A., submits this reply pursuant to its motion that a hearing on the merits be stayed or continued pending the completion of a related rulemaking proceeding which will address the merits of Chesapeake's Applications.

The rhetorical tone of Chesapeake's Response to COG's motion has turned hostile and that is truly unfortunate. However, Chesapeake's pleading serves to remind us that, unlike the vertical well it drilled in Case No. 13492<sup>1</sup>, the only activity to occur here is pre-drilling permitting by the BLM.

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<sup>1</sup> The KF "4" State Well No. 1.

Chesapeake has not made application for its own APD's (or had them denied). Neither has it alleged that its correlative rights are threatened or that waste will occur. These omissions, too, remind us that Chesapeake does not seek real relief, only an advisory opinion.

Yet, while tersely insisting on punitive sanctions for what it contends are improper certifications by COG's permitting staff, Chesapeake concedes in the same Response that the applicability of the certification language on the Division's C-102 forms to horizontal drilling projects is an *unresolved issue*.

Chesapeake's admission is seen at page 5 of its Response:

The only remaining question that is different from a vertical wellbore, is whether the operator of a horizontal wellbore, at the time it files its APD, must also have an interest in [sic] each of the four 40-acre tracts to be included in the 160-acre non-standard unit. COG admitted that it had no such interest. 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. If not, then a horizontal wellbore APD violates the activity that the Commission was seeking to prevent when it amended the certification contained on the Division Form C-109 [sic] in a case involving a vertical wellbore.

Again, it is clear that this is a matter best suited for resolution by way of a well-reasoned, industry-supported rulemaking proceeding, a process that Chesapeake acknowledges is currently under way. Contrary to what Chesapeake represents, nowhere does the *Johnson v. New Mexico Oil Conservation Comm'n.*<sup>2</sup> case support the proposition that the Commission has a duty to resolve this matter by way of an adjudicatory proceeding. Rather, New Mexico case law squarely establishes that this agency has the requisite discretion to answer Chesapeake's question by the rulemaking process. "The decision to make new law through rulemaking or adjudication is one that lies primarily in the informed discretion of the administrative agency." *Hobbs Gas Co. v. New Mexico Public Service Com'n*, 115 N.M. 678, 858 P.2d 54 (1993) (citing *SEC v. Chenery*

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<sup>2</sup> 127 N.M. 120, 978 P.2d 327 (1999)

*Corp.*, 332 U.S. 194, 67 S.Ct. 1575, 91 L.Ed. 1995 [1947]). Chesapeake has brought forward no countervailing authority on this point.

Wherefore, COG Operating LLC *now requests alternative relief*: (1) the entry of an order staying or continuing Chesapeake's Applications in Cases 14323 and 14382, or (2) dismissal of these two cases in view of the forthcoming rulemaking proceeding, in accordance with the proper exercise of the Commission's discretion.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: \_\_\_\_\_



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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was e-mailed to counsel of record on the 12th day of February, 2010 as follows:

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J. Scott Hall

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