

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

**APPLICATION OF MATADOR
PRODUCTON COMPANY FOR A
NON-STANDARD OIL SPACING AND
PRORATION UNIT, COMPULSORY
POOLING, AND NON-STANDARD LOCATION,
LEA COUNTY, NEW MEXICO.**

**CASE NO. 15366 (De Novo)
ORDER NO. R-14097-A**

ORDER OF THE COMMISSION

This matter came before the New Mexico Oil Conservation Commission ("Commission") for hearing on February 11, 2016, at Santa Fe, New Mexico, to consider the motion of Matador Production Company ("Matador") to dismiss the appeal filed by Amtex Energy, Inc. ("Amtex") of Order No. R-14097. The Commission, having considered the Motion, the briefs and arguments of counsel, and being otherwise fully advised, enters the following findings of fact, conclusions of law and orders.

THE COMMISSION FINDS THAT:

(1) This matter concerns the definition of a "party of record" under the New Mexico Oil and Gas Act ("Act"), Sections 70-2-1 et seq., and, therefore, who has the right to apply for a de novo hearing before the Commission after a decision on an adjudicatory matter is rendered by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division"). Section 70-2-13 NMSA 1978.

(2) On August 3, 2015, Matador filed an application ("Application") with the Division seeking approval of a non-standard 160-acre, more or less, oil spacing and proration unit (project area) in the Bone Spring formation, Quail Ridge, Bone Spring Pool (pool code 50460) comprised of the W/2 E/2 of Section 16, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico (the "Unit"). The Application sought an order pooling all uncommitted interests in the Unit and approval of a non-standard location for the well. Order R-14097 Findings 2, 4.

(3) Matador owns or controls 100% of the interest in north half of the Unit and Amtex owns approximately 92.8% working interest in the south half of the Unit. Notice of the Application was provided to all uncommitted mineral interest owners, including Amtex. Order R-14097 Findings 6, 12.

(4) An evidentiary hearing was held on the Application by the Division on September 3, 2015, which was presided over by a technical hearing examiner, Phillip Goetze, and a legal hearing examiner, Gabriel Wade. Matador appeared at the Division hearing and presented evidence in support of the Application. Prior to the hearing, no other person filed a written entry of appearance. No other party appeared at the hearing, or otherwise opposed the granting of the application. Order R-14097 Finding 7.

(5) On September 25, 2015, 22 days after the Division hearing was held, an Entry of Appearance was filed by Amtex Energy, Inc. and William Savage stating they opposed the application. The entry of appearance did not assert the basis for opposing the application, nor did it request that the record be reopened for further evidence. Matador filed a Motion to Quash Entry of Appearance. Order R-14097 Findings 8, 9.

(6) On December 14, 2015, the Division entered Order No. R-14097 granting the Application and ordering that the "Entry of Appearance filed by Amtex Energy, Inc. on September 25, 2015 for this case is untimely and no further testimony will be accepted." Order R-14097, ¶20.

(7) On January 7, 2016, Amtex filed a De Novo Hearing Application with the Commission regarding Division Order No. R-14097 to request that the case be heard de novo before the Commission pursuant to NMSA 1978 §70-2-13 and Rule 19.15.4.23(A) NMAC.

(8) On January 26, 2016, Matador filed a Motion to Dismiss Amtex's Appeal. On February 2, 2016, Amtex filed its Response to the Motion and on February 10, 2016, Matador filed its Reply. On February 11, 2016 the Commission held a hearing on the Motion to Dismiss and heard oral arguments from counsel for Matador and Amtex.

(9) The Act provides that after a matter is referred to a Division hearing examiner and a decision is then rendered by the Division, "any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered." Section 70-2-13 NMSA 1978. (emphasis added). There is no claim that Amtex is "adversely affected" by the Division Order. The only issue is whether Amtex is a "party of record".

(10) The Act does not define "party of record". The term does appear several other times in the Act to determine who may request a rehearing of, or appeal, a decision of the Commission.

Any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within thirty days after filing of the rule under the State Rules Act.
Section 70-2-12.2(C).

Within twenty days after entry of an order or decision of the commission, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision...

Section 70-2-25(A)

A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Section 70-2-25(B).

(11) The Division's rules regarding adjudicatory hearings do not define "party of record" but do define who is, or who may become, a "party" in an adjudicatory proceeding before either the Division or the Commission. Rule 19.15.4.10 NMAC reads in part:

A. The parties to an adjudicatory proceeding shall include:

1. the applicant;
2. a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and
3. a person who properly intervenes in the case.

B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.

C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

(12) Amtex argues that it only needed to qualify as a "party" in the Division proceeding in order to be a "party of record" and therefore have the right to a de novo Commission hearing. As a person who was entitled to notice, Amtex therefore only needed to file an entry of appearance to be a "party" under 19.15.4.10(A), and that entry of appearance could be filed "at any time" under 19.15.4.10(B). At oral argument, Amtex argued that the entry of appearance could be filed at the same time an application for a de novo hearing is filed up to 30 days after the Division order is issued, 19.15.4.23(A) NMAC. Amtex further argued that participation in the Division hearing is unnecessary since the Commission hearing will be de novo. Matador argued that given the limitations in 19.15.4.10(B) and (C), a person must file an entry of appearance prior to the hearing in order to be a party.

(13) In New Energy Economy, Inc. v. Vanzi, the New Mexico Supreme Court considered which participants in several administrative proceedings below had the right to intervene in an appeal to the Court of Appeals. 2012-NMSC-005. The Court found that those who had participated “in a legally significant manner” had the right to intervene. Vanzi, ¶ 47. These included entities that had been petitioners below or who had presented technical evidence at a hearing. However, the Court rejected the right to intervene of an entity that did appear and speak at an adjudicatory proceeding but did not file any entry of appearance or request to intervene prior to the hearing. “This decision not to take formal steps to participate before [the agency] bears significant consequences.” Vanzi, ¶ 53

(14) The Supreme Court chose to adopt the “legally significant” participation standard rather than rely on whether someone was classified as a “party” by the agency below. “We recognize, however, that if we were to allow all parties or other participants in an underlying rule-making proceeding automatically to be made parties to an appeal, then serious unintended consequences could arise.” Vanzi, ¶ 48. “[W]e recognize that the administrative definition of a “party” to a rule-making proceeding is something of a moving target. As discussed earlier, administrative rules may be changed to define a party more broadly or narrowly, such that “party” may not always mean the same thing.” Vanzi, ¶ 49

(15) The Commission finds that Amtex did not take the necessary actions to become a “party of record” in the Division proceeding and therefore have the right to a de novo Commission proceeding. Amtex did not take any actions to become part of the record in the proceeding either by submitting any evidence or arguments in writing or at the hearing, or by filing an entry of appearance prior to, or at, the hearing, or by appearing at the hearing. Amtex filed an entry of appearance well after the record was closed and the case was under advisement by the Division. Even then, Amtex offered no excuses for its late filing and did not request the record be reopened or offer to submit any new evidence.

(16) The Commission does not agree that the term “party of record” should be given an overly broad meaning simply because the Commission proceeding will be de novo. First, “party of record” is used in the Act to determine who has the right to appeal both Division and Commission decisions, and Commission decisions are subject to record review proceedings in the district court and the Court of Appeals. Sections 70-2-12.2 and 70-2-25 NMSA 1978. Second, the Act and the Commission rules intend for a full and fair proceeding before the Division hearing examiners and the Division Director, including notice to all affected parties, in the hopes that the issues will be fully developed and addressed by the Division. Finally, if a person wants the Commission to hear the case initially, they can request that the Division Director assert his authority under the Act to hold the hearing before the Commission. “In addition, any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter.” Section 70-2-6(B) NMSA 1978.

THE COMMISSION CONCLUDES THAT:

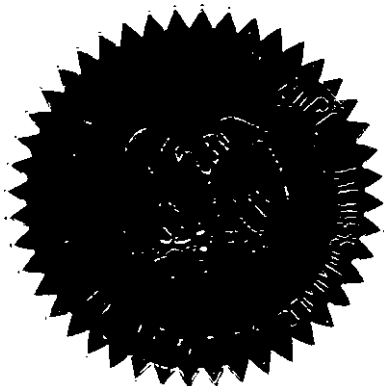
(1) The Commission has jurisdiction over the parties and the subject matter of this case.

(2) Amtex is not a "party of record" in Case 15366 and therefore does not have the right to a de novo Commission hearing.

IT IS THEREFORE ORDERED THAT:

(1) The Motion to Dismiss Amtex's Appeal filed by Matador is granted. Case 15366 (De Novo) is hereby dismissed.

DONE at Santa Fe, New Mexico this 10th day of March, 2016.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


ROBERT BALCH, Member


PATRICK PADILLA, Member


DAVID R, CATANACH, Chair

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