

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:**

**APPLICATION OF COLGATE OPERATING, LLC
FOR COMPULSORY POOLING
EDDY COUNTY, NEW MEXICO.**

**Commission Case No. 21744
Case Nos. 21629
Order No. R-21575
Order No. R-21575-A
Order No. R-21575-B
Order No. R-21575-C**

MOTION TO AFFIRM COMMISSION ORDER R-21575-C

Colgate Operating LLC (“Colgate”), for its Motion to Affirm Commission Order R-21575-C states:

A. Introduction.

At Paragraph 111 of Order No. R-21575-C, the Commission denied the motion of Cimarex Energy and Magnum Hunter (“Cimarex”) for de novo hearing. From the beginning the focus of Cimarex has been on the narrow issue that Colgate failed to comply with NMSA 1978, § 70-2-13 in that it failed to negotiate in good faith with Cimarex for joinder in the proposed well. The proceedings before the Commission were premised on the outcome of the Evidentiary Hearing. If the Commission determined that Colgate had not acted in good faith in seeking a compulsory pooling order before the Division, then a de novo hearing would have followed. If the Commission found, as it did, that Colgate did not violate § 70-2-13, then a de novo hearing would be unnecessary. Undoubtedly, Cimarex will argue that it has competing applications, and therefore, a de novo hearing will be necessary. The Cimarex applications were never part of the

record before the Division. Only after Commission Order R-21575-B did it file its competing applications. It initially filed applications in Cases 21764 and 21765, but had to withdraw those cases because it failed to propose the wells to working interest owners. It then refiled those applications in Cases 22018 and 22019 which were an afterthought to the application for de novo hearing and contingent on the outcome of the Evidentiary Hearing.

B. The Commission held Colgate's Motion to Dismiss Cimarex Applications and Cimarex's Motion to Invalidate and Vacate Colgate's Operating, LLC's Order No. R-21575 in abeyance pending the outcome the Evidentiary Hearing.

At the Commission's July 8, 2021 hearing there was considerable dialogue about the parties' respective motions and bifurcation of an evidentiary hearing and a hearing on the merits. Attached as Exhibit A is a portion of the July 8, 2021 hearing transcript. At Page 38 (6-19), the Commission Chair discusses an evidentiary hearing to resolve whether Colgate satisfied the §70-2-13 requirements, and if it did, "a merits hearing to be determined as being not necessary." At Page 40 (2-8) the Commission Chair and Mr. Moander, counsel for the Commission, discuss the evidentiary hearing outcome and whether a merits hearing may be necessary, concluding that a merits hearing will be unnecessary should Colgate satisfy the good faith negotiation requirements at the evidentiary hearing.

C. Through the Commission's Order No. 21575-B, the Commission bundled filing requirements for final determination at the Evidentiary Hearing.

Order 21575-B, attached as Exhibit B, was issued on May 26th, 2021 and directed that the parties submit all motions, dispositive or otherwise, by June 3, 2021. This order also directed Cimarex to file competing applications also by June 3. Prior to that time, competing applications had not been filed or filed without proposals to interest owners. More importantly, the Commission set a motion hearing a motion hearing to be followed by a de novo hearing a little over a month later. The reason for the bifurcation of a motion hearing and a de novo hearing is

illustrated in Paragraph B above. Clearly, the contemplation was that depending on the outcome of motion hearing, a de novo hearing would have been unnecessary. The direction to Cimarex to file competing applications was made should the de novo hearing became necessary. Later, at the hearing held by the Commission on July 8, 2021, the Commission delayed a determination of motions until the Evidentiary Hearing. Clearly, the Commission contemplated that the Evidentiary hearing could end the case. Certainly, the Commission could have gone straight to a de novo hearing, and there would not have been any discussion of whether a de novo hearing may or may not have been necessary.

D. Conclusion.

The Commission has Order R-21575 stand. Effectively, a de novo hearing on the issue of whether Colgate acted in good faith in its compulsory pooling procedures in this case became unnecessary. The Commission correctly denied Cimarex's motion for a de novo hearing.

Accordingly, Colgate asks that the Commission to affirm its Order R-21575-C.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

/s/ Ernest L. Padilla

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CERTIFICATE OF SERVICE

I certify that on May 4, 2022, I served a copy of the foregoing pleading by electronic mail to:

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/s/ Ernest L. Padilla

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OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED
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THE PURPOSE OF CONSIDERING:

Application of Cimarex Energy Company
for Hearing De Novo of Case 21429
Eddy County, New Mexico

Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

THURSDAY, JULY 8, 2021

AGENDA ITEM NO. 5

BEFORE: ADRIENNE SANDOVAL, COMMISSION CHAIR
GREG BLOOM, COMMISSIONER
TERRY WARNELL, COMMISSIONER

This matter came on for hearing before the
New Mexico Oil Conservation Commission on
Thursday, July 8, 2021, Via the Webex Virtual
Conferencing Platform, hosted by the New Mexico
Energy, Minerals and Natural Resources Department

Reported by: Mary Therese Macfarlane
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1 like 70-2-13, as well as some of the language in 19.15.4
2 NMAC, too, but taking a look at 19.15.4.16C, which
3 concerns a hearing on motions, or those motions here, my
4 suggestion is at this point -- because one of the problems
5 I'm struggling with is I think the parties, that's why
6 they are in front of the Commission. I think that an
7 evidentiary hearing at the August setting on the issue of
8 whether or not -- I hope I don't get this wrong, whether
9 or not Colgate met the requirements of conference before
10 filing its original application at the Division level
11 would be appropriate, because we would get actually
12 substantive evidence on the record for everybody involved,
13 the parties would have the opportunity to demonstrate
14 either the deficiency or lack of deficiency in the
15 original Division's application, and it would be
16 consistent with 19.5.4.16C to have that resolved prior to
17 a merits hearing, because it is, I suppose, possible that
18 at this point that a merits hearing be determined as being
19 not necessary.

20 So a motions hearing on -- sorry, an
21 evidentiary hearing specifically concerning the Notice
22 requirements that have been complained about.

23 Give me just a second, because if we take a
24 look at the application to re-open the case by Cimarex I
25 note here that the legal arguments about having a de novo

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1 hearing Cimarex focuses on -- it's first argument is that
2 Colgate failed to negotiate, contrary to the agreement to
3 engage in good faith negotiations. And that I think
4 stands out, as well, because it's clearly the focal point
5 of the application, and to resolve whether it actually
6 happened or not would determine the future of this case as
7 a de novo matter.

8 So again to distill this down, I would
9 recommend or I do recommend an evidentiary hearing for the
10 July -- sorry, August docket for OCC. The Commission can
11 enforce subpoenas, although customarily that is not an
12 issue, but if the Commission proceeds with that, the
13 parties can bring in whoever they needed to testify one
14 way or the other.

15 COMMISSION CHAIR SANDOVAL: Thank you Mr.
16 Moander.

17 To add, just to clarify. In your proposal,
18 in the August OCC we would hear evidence and testimony on
19 first the issue of whether or not the Order from the
20 Division should be invalidated because Colgate didn't
21 follow the good faith negotiation requirement. Is that
22 correct?

23 MR. MOANDER: Yes. Add to that, or maybe
24 clarify it, I think I would suggest the Commission hold in
25 abeyance its rulings on the two pending motions until the

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1 conclusion of the evidentiary hearing in August.

2 COMMISSION CHAIR SANDOVAL: And then depending
3 upon the outcome of the August hearing would dictate
4 whether or not we move forward with the September hearing.

5 MR. MOANDER: That's correct. Any
6 determinations made at the conclusion of the evidentiary
7 hearing would essentially determine the future of the
8 remainder of the case, if any.

9 And I do want to comment just to the
10 parties that, you know, I realize this has been a rather
11 tedious process, but I also recognize that both parties
12 are bringing issues before the Commission that don't --
13 they don't have a lot of history, so the Commission is
14 trying here, if I may speak for them as their counsel,
15 very diligently to get this right so that whatever comes
16 out at the end is reliable and viable for the parties.

17 So at least from my perspective I
18 appreciate your tolerance of this, because I want to get
19 it right for you, as well. (Note: Pause.)

20 COMMISSION CHAIR SANDOVAL: Okay. Commissioners,
21 do you have any questions for Mr. Moander or additional
22 thoughts?

23 COMMISSIONER BLOOM: Madam Chair, Mr. Moander,
24 are we then holding in abeyance both the -- I think it was
25 the Motion to Invalidate and Vacate and also the Motion to

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1 Dismiss until that point?

2 MR. MOANDER: That would be correct. I think
3 there is an order for these to be evaluated, and the
4 primary motion to be dealt with is the one concerning
5 vacating the underlying Division Order.

6 COMMISSIONER BLOOM: I guess as I consider it at
7 this point, I wouldn't -- I think I'm going to leave it
8 there.

9 Thank you, Mr. Moander.

10 COMMISSIONER WARNELL: Madam Chair, Commissioner
11 Warnell here. I see no harm to either party if we were to
12 put this on the OCC August docket.

13 COMMISSION CHAIR SANDOVAL: Thank you, Mr.
14 Warnell.

15 I agree. I think -- you know, there's
16 been -- you know in the previous hearings conversations
17 surrounding whether or not the good faith effort was
18 undergone, but I would like to hear testimony and
19 witnesses to that effect so that the Commission, you know,
20 has enough information to make a decision on that issue
21 itself.

22 So is there a motion to hold the motion --
23 is there a motion to hold the motions in abeyance until
24 the next regularly scheduled OCC hearing on August 12th,
25 and have the parties provide testimony and witnesses?

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**APPLICATION OF COLGATE OPERATING, LLC
FOR COMPULSORY POOLING,
EDDY COUNTY NEW MEXICO**

**Commission Case No. 21744
Order No. R-21679-B**

PRELIMINARY PROCEDURAL ORDER

As permitted by 19.15.4 NMAC, the Oil Conservation Commission ("Commission") will hear the Application for Compulsory Pooling by Colgate Operating, LLC ("Colgate") on September 16, 2021. The Commission will conduct this hearing via telephonic/virtual means by a quorum of the Commission or a hearing officer appointed by the Commission. The parties, their witnesses, and members of the public may attend the meeting through the Webex Meeting platform using the link and meeting information to be provided in the Public Notice available <http://www.emnrd.state.nm.us/OCD/hearings.html>. Additionally, the Commission shall hear all Motions on July 8, 2021 and such hearing shall be conducted by the same logistical procedures as the September 16, 2021 hearing.

In addition to the procedures found in Rule 19.15.4 NMAC, the following deadlines are now in place per the agreement of the Parties and the Commission. This Order may be modified as needed by the Parties or Commission through a requested setting before the Commission.

1. WebEx Meeting Information

Motion hearing – July 8, 2021

Compulsory Pooling Application by Colgate Operating, LLC

WebEx Information at <http://www.emnrd.state.nm.us/OCD/outreach.html>

De Novo Hearing – September 16, 2021

Compulsory Pooling Application by Colgate Operating, LLC

WebEx Information at <http://www.emnrd.state.nm.us/OCD/outreach.html>

2. Motions



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- a. All Motions, dispositive or otherwise, shall be filed with the Commission and served electronically on the applicant and each person entering an appearance no later than 5:00 PM June 3, 2021.
- b. Responses shall be filed with the Commission and served electronically on the applicant and each person entering an appearance no later than 5:00 PM June 17, 2021.
- c. Replies shall be filed with the Commission and served electronically on the applicant and each person entering an appearance no later than 5:00 PM July 1, 2021.
- d. Timely filed Motions shall be heard by the Commission or a hearing officer appointed by the Commission on July 8, 2021 at 9:00 AM.
- e. The Commission reserves the right to decide non-dispositive Motions without a hearing.

3. **Other Matters**

- a. Cimarex shall file all competing pooling applications by 5:00 PM June 3, 2021.

IT IS SO ORDERED.

DONE at Santa Fe, New Mexico, on this 26th day of May 2021.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



ADRIENNE SANDOVAL, M.E., CHAIR

SEAL