

Davidson, Florene, EMNRD

From: Toni M. Harris [tharris@mstLAW.com]
Sent: Tuesday, July 12, 2011 3:44 PM
To: Davidson, Florene, EMNRD
Cc: omundsdry@hollandhart.com; Swazo, Sonny, EMNRD; Bada, Cheryl, EMNRD; Tom Bunting; Rick L. Alvidrez; Karen S. Williams
Subject: Application of Duke Energy Field Services, LP for an Acid Gas Injection Well, Lea County, NM, Case No. 13589
Attachments: Renewed Motion to Continue Hearing.pdf

Ms. Davidson,

I am attaching for filing The Smiths' Renewed Motion to Continue Hearing on DCP's Motion to Amend Order No. R-12546. Thank you for your assistance in this regard.

Toni M. Harris
Assistant to Attorney Thomas J. Bunting
Miller Stratvert P.A.
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

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2011 JUL 12

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

CASE NO. 13589

**RENEWED MOTION TO CONTINUE HEARING ON DCP'S
MOTION TO AMEND ORDER NO. R-12546**

The Smiths hereby renew their motion for the Commission to continue its hearing on the Motion to Amend Order No. R-12546 ("Motion") filed by DCP Midstream, LLC ("DCP"), currently set for July 14, 2011. In support, the Smiths incorporate the allegations and legal argument in their *Response In Opposition To DCP's Motion To Amend Order No. R-12546 And Request To Continue Hearing*, filed on June 24, 2011. The Smiths filed this renewed motion as expeditiously as possible after becoming aware of the additional need for a continuance. They request a ruling before the July 14 hearing if possible or, alternatively, consideration of this motion at the commencement of the hearing.

The additional grounds for a continuance involve questions of adequate notice, due process, and whether the Smiths have received a fair chance to present their opposition to DCP's Motion. Undersigned counsel received DCP's pre-hearing statement in the mail today, July 12 – less than two full days before the hearing and five days after the certificate of service indicates it was mailed. The statement lists three witnesses DCP plans to call, as well as proposed exhibits containing technical data on injection pressures and volume and on the composition of the injected gas.

The Smiths are in some ways left defenseless by the short notice of DCP's exhibits and witnesses. It is too late to engage witnesses to review DCP's data. Likewise, it is too late to prepare meaningful rebuttal evidence without an expert interpretation of these exhibits. Whereas before the Smiths did not have any technical evidence of their own to present, now their problem is compounded by not having bases to challenge DCP's newly-revealed data. This situation requires a continuance.

Rule 19.15.4.13 NMAC requires service of documents such as the pre-hearing statement by either hand delivery, fax, or email – presumably as the fastest and most reliable means of service. Service via regular mail is expressly disallowed when, as here, DCP's counsel knows the Smiths' counsel's fax and email contact information. The Smiths do not wish to hold DCP's feet to the fire on every procedural detail but, in this situation, DCP's deviation from the rules has prejudiced the Smiths. At the least the Division rules require adequate actual notice to all parties; the Smiths have not received that minimal notice here.

The Commission's rulings must be based on substantial evidence and be neither arbitrary nor capricious. NMSA 1978, § 39-3-1.1 (C); see Otero v. New Mexico State Police Bd., 83 N.M. 594, 595, 495 P.2d 374, 375 (1972). Also, “[a]dministrative proceedings must conform to fundamental principles of justice and the requirements of due process of law.” Uhdén v. New Mexico Oil Conservation Comm’n, 112 N.M. 528, 531, 817 P.2d 721, 724 (1991). For these and the reasons stated above, the Smiths believe the Commission must continue the hearing.

Respectfully submitted,

MILLER STRATVERT P.A.

By: DP

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email to the following counsel of record on this the 12 day of June, 2011:

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