

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

**APPLICATION OF NEARBURG EXPLORATION COMPANY,
SRO2 LLC AND SRO3 LLC FOR AN ACCOUNTING AND
LIMITATION ON RECOVERY OF WELLS COSTS, AND
FOR CANCELLATION OF APPLICATION FOR PERMIT
TO DRILL, EDDY COUNTY, NEW MEXICO.**

CASE NO. 15441 (De Novo)

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

CASE No. 15481 (De Novo)

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

CASE No. 15482 (De Novo)

**COG's REQUEST FOR A PREHEARING CONFERENCE
TO SET THESE MATTERS FOR HEARING BEFORE THE COMMISSION.**

Pursuant to NMAC 19.15.4.16, COG Operating LLC ("COG") requests that the Division Director, as Chair of the Commission, hold a prehearing conference for the purpose of setting these matters for hearing at the November 10, 2016, Commission docket. In support of this request, COG states:

1. On June 29, 2016, following a hearing before Division Examiners William V. Jones and David K. Brooks, the Division issued Order No. R-14187 in the above referenced matters.

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2. On July 29, 2016, NEX filed an Application for Hearing De Novo with the Division. Pursuant to NMAC 19.15.4.23(A), the matters addressed by Division Order R-14187 must now be heard de novo before the Commission.

3. NEX's application for hearing de novo unilaterally requests that the Commission hearing take place on the December 6, 2016, docket. The parties have recently been informed that the Commission intends to address rulemaking issues at the December 6th docket, thereby preventing the Commission from conducting a de novo hearing at that time.

4. COG has requested that this matter be heard at the November 10, 2016, Commission docket. However NEX disagrees, expressing a desire to conduct further discovery in the District Court proceedings involving the two parties before pursuing its de novo appeal of Order R-14187.

5. COG objects to NEX's desire to delay the de novo hearing on these matters until an undetermined time in 2017 for the following reasons:

a. NEX conducted extensive discovery in the Division proceedings prior to the Division hearing in this matter, requiring Division staff (namely David Brooks) to address various discovery issues. *See, e.g.*, NEX's Subpoena Duces Tecum issued on December 16, 2015; COG's Motion to Dismiss Application and Quash Subpoena filed January 1, 2015; NEX's Motion To Compel And For Sanctions filed March 16, 2016; COG's Motion for a Protective Order filed April 18, 2016.

b. NEX's discovery in the Division proceedings and the District Court proceedings has required COG to produce over 156,000 pages of correspondence, internal emails, well files, unit files, title opinions, and other documents.

c. Following extensive document production by COG, NEX proceeded with a hearing before the Division on the matters addressed by Order R-14187. The Division hearing included examination of four witnesses. *See* Transcript of May 4, 2016, hearing in Case Nos. 15441, 15481 and 15482.

d. The District Court proceedings involving COG and NEX are in the initial stages of discovery. The parties are currently engaged in a dispute over the proper venue, which is pending in the New Mexico Court of Appeals. Accordingly the District Court proceedings, and NEX's related desire to conduct discovery in those proceedings, is likely to take months, if not years.

e. Additional discovery for this administrative proceeding is not necessary to review de novo the issues addressed by Division Order R-14187, which include:

i. Whether COG had the "requisite good faith belief" in its authority to drill the SRO State Com 43H and SRO Unit State Com 44H wells as required by Division Rules 19.15.14.8.B and/or 19.15.16.15.A (*see* Order R-14187 at pp. 5-7);

ii. Whether the Division can require an accounting of proceeds in the absence of a pooling order (*id.* at p. 7-8);

iii. Whether the drilling permit for the SRO State Com 69H well should be rescinded (*id.* at p. 8);

iv. Whether the Communitization Agreements approved by the New Mexico State Land Office for the subject acreage are effective (*id.* at p. 8, ¶46);

v. Whether COG is entitled to pooling orders for the subject acreage now that NEX has repudiated the voluntary agreements governing the acreage (*id.* at pp. 9-10).

6. The Commission's immediate review of Order R-14187 is necessary to confirm the extent of its own jurisdiction, to assure compliance with the statutorily-mandated pooling requirements, and to advance the ultimate resolution of the limited issues raised in this administrative proceeding. The factual record before the Hearing Examiner contains all facts necessary for the Commission to determine the issues presented. Further delay of the Commission's *de novo* hearing is unwarranted and prejudicial to COG's rights and interests.

WHEREFORE COG respectfully requests that the Division Director, as Chair of the Commission, hold a prehearing conference for the purpose of setting this *de novo* hearing at the November 10, 2016, Commission docket.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, I served a copy of the foregoing document to the following counsel of record via electronic mail:

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