

**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 TO
CONSIDER:**

**APPLICATIONS OF ASCENT ENERGY, LLC
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.**

**OCC CASE NOS. 21277 & 21278
(Division Case Nos. 16481 & 16482)**

**AMENDED APPLICATIONS OF APACHE
CORPORATION FOR COMPULSORY POOLING
AND APPROVAL OF A HORIZONTAL SPACING
UNIT AND POTASH DEVELOPMENT AREA,
EDDY COUNTY, NEW MEXICO.**

**OCC CASE NOS. 21279 & 21280
(Division Case Nos. 20171 & 20202)**

ORDER NO. R-21258

**APACHE CORPORATION'S RESPONSE TO
ASCENT ENERGY, LLC'S MOTION TO REHEAR ORDER NO. R-21454**

Apache Corporation ("Apache") for its Response to Ascent Energy, LLC's ("Ascent") Motion to Rehear Order No. R-21454 ("Motion") states as follows:

1. The Commission issued Order No. R-21454 staying the de novo hearing of these combined cases until a hearing is held by the Division regarding competing cases for compulsory pooling filed by Mewbourne Oil Company and Apache. The Commission's Stay Order was issued after full briefing by the parties and oral argument held and fully supported by good cause. The Order promotes administrative efficiency and economy and was a simple exercise of the Commission's authority to manage both its docket and the docket of the Division to ensure that the decision of each agency is based upon a proper consideration of evidence through the

two-step process established by the legislature under the Oil and Gas Act for Division hearings and de novo hearings involving and appeal of an order by the Division.

2. Ascent's Motion presents no new grounds for revisiting the Commission's decision and should be denied. Indeed, before filing the motion, Ascent represented that it was not even seriously seeking reconsideration of the Commission's Stay Order but was merely: "filing a Motion for Rehearing of Commission Order No. R-21454 pursuant to Section 70-2-25, to preserve Ascent's appellate rights under said statute." See September 9, 2020 email from Ascent to the Commission and Division, attached hereto as Exhibit "A." Ascent further represented that "[s]uch motion should not disrupt or alter tomorrow's status conference pursuant to the Commission's standing Order, and we will make every effort to find dates and times satisfactory to all parties."

3. Where a party is merely trying to take "two bites at the apple," relying on evidence and authorities that were available to it previously, a motion for reconsideration should be denied. *McCann v. St. Vincent Hosp.*, No. 32,444, 2014 WL 5092247, at *4 (N.M. Ct. App. Aug. 25, 2014); *Deaton v. Gutierrez*, 2004-NMCA-043, ¶ 10, 135 N.M. 423 (stating the district court did not abuse its discretion by rejecting what was "merely a restatement of the arguments they had already advanced"). Other courts have similarly recognized that a motion for reconsideration of a judgment should not be granted unless the movant is able to establish: (1) an intervening change in the controlling law; (2) new, previously unavailable evidence; or (3) the need to correct a clear, manifest error or prevent manifest injustice. See *Grynberg v. Ivanhoe Energy, Inc.*, 490 F. App'x 86, 100-01 (10th Cir. 2012) *cert. denied*, 133 S. Ct. 941 (2013) (citing *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir.2000)).

4. Ascent's Motion fails to present any new evidence or argument that was not raised in the prior briefing or at the hearing, and should be denied. Indeed, there is no basis for even granting the relief requested. The hearing that was stayed by the Commission's Order was scheduled *for tomorrow*, September 17, 2020. A hearing can obviously not occur tomorrow without proper notice and compliance with the Commission's rules concerning the filing of prehearing statements and exhibits.

5. Ascent's Motion neither cites new authority, previously unavailable evidence and there has obviously not been any intervening change in the law to cause the Commission to revisit its Stay Order. Nor does Ascent argue that the Commission's Order was manifestly unjust as required to warrant a motion for reconsideration.

6. Ascent has failed to provide any new information that would warrant a rehearing of Order No. R-21454. The Commission clearly has jurisdiction and authority to control its docket, establish the date for hearing the de novo appeals in these cases and stay such hearing to allow the Division to consider competing compulsory pooling cases involving application for overlapping horizontal spacing units and Potash Area Development Areas which will involve the presentation of the same evidence and afford the parties the opportunity to first present such evidence to the Division.

7. Ascent's Motion mischaracterizes Commission Order R-21454. Ascent contends that Order R-21454 directed the Division to "rehear" Ascent's W/2W/2 cases, which is inaccurate. The Commission stayed the Commission hearing on Ascent's W/2W/2 cases, and specifically stated that the de novo applications filed seeking review of those cases "can and will be heard by the Commission," which it would not have done had the Commission intended for the Division to rehear them.

8. Finally, Ascent's Motion ignores the fact that Apache's soon to be filed cases cover both the E/2W/2 and the W/2W/2 and thus cannot be segregated as Ascent suggests. A single *de novo* hearing is appropriate given the fact that Apache's cases will cover both the E/2W/2 and W/2W/2 Lands.

9. Order R-21454 takes a pragmatic, thoughtful approach given the complexity of these matters and correctly determines that staying *de novo* review of the W/2W/2 cases until the competing applications are heard by the Division or otherwise resolved is the appropriate way to proceed.

CONCLUSION

Ascent's Motion was admittedly filed simply to "preserve Ascent's appellate rights under [Section 70-2-25]" and is waste of the Commission's and the parties' time. For all of the foregoing reasons, the Motion should be denied.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/ Earl E. DeBrine, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on September 16, 2020:

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Earl E. DeBrine

From: Darin Savage <darin@abadieschill.com>
Sent: Wednesday, 9 September, 2020 4:24 PM
To: Davidson, Florene, EMNRD
Cc: Felicia Orth; Ames, Eric, EMNRD; Dana Hardy (dhardy@hinklelawfirm.com); Dioscoro Andy Blanco; Earl E. DeBrine; Deana M. Bennett; Lance D. Hough; Delva Moellenberg (dlm@gknet.com); Ernest Padilla; Andrew Schill; Bill Zimsky
Subject: Notice of Motion for Rehearing

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and are expecting this message and know the content is safe.

Good afternoon,

As a courtesy, we would like to give notice to the Division and Commission that on behalf of Ascent Energy, LLC, we will be filing a Motion for Rehearing of Commission Order No. R-21454 pursuant to Section 70-2-25, to preserve Ascent's appellate rights under said statute.

Such motion should not disrupt or alter tomorrow's status conference pursuant to the Commission's standing Order, and we will make every effort to find dates and times satisfactory to all parties.

Thank you,

Darin



DARIN SAVAGE

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