

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

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

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

**OCC Case No. 21744  
OCD Case No. 21629  
OCD Order No. R-21575  
OCC Order No. R-21679  
OCC Order No. R-21679-A  
OCC Order No. R-21679-B  
OCC Order No. R-21679-C**

**CIMAREX ENERGY CO.'S MOTION TO MAINTAIN THE STAY OF DIVISION  
ORDER NO. R-21575 UNTIL ISSUES RAISED BY CASE NO. 21744 ARE RESOLVED  
AT THE CONCLUSION OF FINAL APPEAL**

Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”), respectfully submits their Motion to Maintain the Stay of Division Order No. R-21575 Until Issues Raised by Case No. 21744 are Resolved at the Conclusion of Final Appeal. In support thereof, Cimarex states the following:

**I. Relevant Procedural History and Background:**

1. Colgate filed an application in Case No. 21629 for compulsory pooling with the New Mexico Oil Conservation Division (“Division” or “OCD”) to pool a 320-acre horizontal spacing unit in the Bone Spring formation comprised of the N/2 N/2 of Sections 2 and 3, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico.
2. On January 19, 2021, Cimarex entered an appearance in Case No. 21629.

3. On January 20, 2021, before Colgate had submitted its final exhibits in Case No. 21269, the Division issued Order No. R-21575, granting Colgate’s application for compulsory pooling.

4. Colgate did not submit its final exhibits to its application in Case No. 21269 until January 27, 2021.

5. On February 17, 2021, Cimarex filed a timely Application for a Hearing *De Novo*. In response, Colgate filed a motion to dismiss Cimarex’s Application.

6. The Commission denied Colgate’s motion to dismiss based on its conclusion that Cimarex is a “party-of-record” and granted its request for a *de novo* hearing. Order No. R-21679, which was issued on April 30, 2021.<sup>1</sup>

7. On March 26, 2021, Cimarex filed a motion to stay Pooling Order No. R-21575. At the April 15, 2021 hearing, Chair Sandoval stating the stay is the right decision “considering we are granting a *de novo* appeal.” Tr. 39:18-20, April 15, 2021, Hearing.

8. By Order of the Commission Granting a Stay of Division Order No. R-21575<sup>2</sup> (the “Stay Order”), the Commission stayed the effectiveness of Pooling Order No. R-21575.

---

<sup>1</sup> In Case Nos. 22191-92, the OCD has subsequently relied on OCC’s precedent and policy in the present Case and OCC Case Nos. 21277-78 to uphold the necessity of hearing competing applications submitted by a party who made its entry of appearance after the OCD hearing had been held. *See* Order on Motion to Reopen, Case Nos. 22191-92 ¶¶ 7-8 (*citing* Colgate Operating, LLC, Order No. R-21679, and Ascent Energy, LLC, Order No. R-21454); clearly, under currently established OCC policy, Cimarex’s Application to Reopen Case No. 21629 would have been granted by the OCD and its competing applications heard, same as they should be heard on the merits by the OCC in the present Case.

<sup>2</sup> Order No. R-21679-A, issued on April 30, 2021.

9. On June 1, 2021,<sup>3</sup> in compliance with Order No. R-21679-B, Cimarex filed competing applications seeking compulsory pooling orders to pool horizontal spacing units in the Bone Spring formation, docketed as OCD Case Nos. 22018 and 22019, which partially overlapped Colgate's proposed Bone Spring horizontal unit. Cimarex timely filed its competing application pursuant to the Commission's directive in Order No. 21679-B, an Order that fulfilled the Commission's statutory mandate under the New Mexico Oil and Gas Act ("Act") to select the best development plan to prevent waste and protect correlative rights. This Order is consistent with prior rulings in Case Nos. 21277 and 21278 as well as Division Case Nos. 22191 and 22192 that established a process to ensure the evaluation of the relative merits of competing applications.

10. The OCD continued these cases until the Commission determined the proper forum for hearing the applications as part of Cimarex's vested right to the *de novo* hearing. *See* Transcript of the July 1, 2021, OCD Hearing in Case Nos. Case Nos. 22018 and 22019.

11. On June 2, 2021, Cimarex filed a Motion to Invalidate and Vacate Colgate's Order No. R-21575 with the Commission ("Motion to Vacate Order") based on the argument that Colgate did not meet the good faith negotiation requirement that is a statutory and regulatory predicate to filings an application for compulsory pooling. On that same day, Colgate filed a Motion to Dismiss Cimarex's Applications, evidencing that Cimarex had met the OCC's June 3, 2021, deadline for filing its competing applications.

12. After these motions were fully briefed, the Commission held a hearing on both motions on July 8, 2021. At that hearing, the Commission agreed to bifurcate the proceeding

---

<sup>3</sup> It should be noted that Cimarex submitted its competing applications on June 1, 2021, and the OCD approved the submission on June 3, 2021.

and set an evidentiary hearing for the Commission's regular September 2021 meeting on the issue of whether Colgate engaged in good faith negotiations with Cimarex before it filed its compulsory pooling applications.<sup>4</sup> The Commission set the *de novo* hearing on the merits of the competing applications for the Commission's regularly scheduled October 21 meeting, subject to the Commission's determination after the evidentiary hearing of the proper forum to hear the applications. *See* Transcript of the July 8, 2021, Commission Hearing at 45.

13. After the submission of evidence and arguments by the parties, the Commission voted to find that Colgate satisfied good-faith negotiations requirement by sending Cimarex an AFE and Well Proposal. *See* Transcript of the March 10, 2022 Hearing at 194:12 – 195:14. Based on that finding, the Commission held that it was proper for Colgate to obtain a forced pooling order from the OCD. *Id.* Thus, the Commission denied Cimarex's Motion to Vacate. *Id.* at 195:15 – 196:10.

14. The Commission set a status conference for April 14, 2022. *See* Transcript of the April 14, 2022 Commission Hearing at 13:22-23 and 14:1-6.

15. The Commission adopted Order No. R-21679-C at the April 14, 2022 status conference. In its Order, the Commission held that Colgate satisfied the good-faith negotiations requirement (Order ¶¶ 102 and 103), which was consistent with its vote at the end of the March 10 hearing.

16. However, Order No. R-21679-C also denied Cimarex's application for *de novo* hearing in this matter despite that fact that the Commission had agreed at the July 8, 2021 hearing to bifurcate the case and, after voting to find that Colgate had met the good faith

---

<sup>4</sup> After the hearings were continued, the Commission held the evidentiary hearing on February 22 and March 10, 2022

negotiations requirement at the March 10 hearing, recognized that there would be a hearing *de novo* on the merits of competing applications for the Subject Lands.

17. At the April 14, 2022, status conference, the Commission confirmed that Case No. 21744 had been bifurcated to provide for a *de novo* hearing on the merits. At that time, the Commission directed the parties to file motions addressing the remaining issues. However, Order No. 21679-C contains language in its ¶ 111 that barred further consideration of the bifurcation, which forced Cimarex to submit an Application for Rehearing the Decision in Order No. 21679-C on May 3, 2022. The Commission's failure to act on that Application within ten (10) business days constituted a denial of the Application that is a final disposition of the application pursuant to NMAC 19.15.4.25.

**II. The language in Paragraph 111 of Order No. R-21679-C might be used to undermine the Commission's Stay Order.**

18. Although Cimarex believes that the Commission's Stay Order should remain in place until affirmatively acted upon after the conclusion of the *de novo* hearing granted by the Commission, the language of ¶ 111 in Order Nos. R-21679-C appears to deny Cimarex's application for a *de novo* hearing after the application had been previously granted. This language may be interpreted as negating the Stay Order .

19. As a result, to the extent that Commission Order No. R-21679-C denying Cimarex's application for a *de novo* hearing may negate the Commission's Stay Order, Cimarex respectfully requests that the Commission's Stay Order remain in place and so that it suspends the effectiveness of the Division's Order No. R-21575 granting Colgate's compulsory pooling order.

20. Pending any change in circumstances, Cimarex must file an appeal of Order No. R-21679-C by June 14, 2022 .

**III. Conclusion:**

For the foregoing reasons, Cimarex requests the Commission maintain its Stay Order until this proceeding is final and no longer subject to appellate review.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

---

Darin C. Savage

William E. Zimsky  
Andrew D. Schill  
214 McKenzie Street  
Santa Fe, New Mexico 87501  
Telephone: 970.385.4401  
Facsimile: 970.385.4901  
darin@abadieschill.com  
bill@abadieschill.com  
andrew@abadieschill.com

**Attorneys for Cimarex Energy Co., and affiliate  
Magnum Hunter Production, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record, via electronic mail on May 27, 2022:

Ernest L. Padilla  
P.O. Box 2523  
Santa Fe, NM 87504  
Telephone: (505) 988-7577  
Email: PadillaLawNM@outlook.com  
*Attorney for Colgate Operating, LLC  
And Colgate Energy*

Michael H. Feldewert  
Adam G. Rankin  
Julia Broggi  
Holland & Hart LLP  
Post Office Box 2208  
Santa Fe, NM 87504  
505-998-4421  
505-983-6043 Facsimile  
mfelderwert@hollandhart.com  
agrarkin@hollandhart.com  
jbroggi@hollandhart.com  
*Attorneys for EOG Resources, Inc.*

/s/ Darin C. Savage

---

Darin C. Savage