

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

CASE NO. 13,453
AWAITING FINAL COMMISSION ACTION
NO EVIDENCE OR TESTIMONY TAKEN

DISCUSSION OF PROPOSED AMENDMENTS TO
RULES 1201, 1203 THROUGH 1209, 1211, 1212 and 1220

APPLICATION OF EDGE PETROLEUM EXPLORATION COMPANY
FOR RE-HEARING OF CASE NUMBER (13,351)

CASE NO. 13,402 *de novo* (Continued)

TRANSCRIPT OF PROCEEDINGS

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
FRANK T. CHAVEZ, COMMISSIONER

May 12th, 2005
Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, May 12th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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May 12th, 2005
Commission Hearing

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: Good morning, at this time I'd
4 like to call the May 12th, 2005, meeting of the New Mexico
5 Oil Conservation Commission to order. Please note for the
6 record that the time is 9:00 a.m., Thursday, May 12th,
7 2005. The location of this meeting is Porter Hall in the
8 New Mexico Oil Conservation Division Office in Santa Fe,
9 New Mexico.

10 My name is Mark Fesmire, I'm the Chairman of the
11 Commission.

12 To my right is Commissioner Jami Bailey.
13 Commissioner Bailey is the designee to the Commission of
14 State Land Commissioner Mr. Patrick Lyons.

15 To my left is Commissioner Frank Chavez. Mr.
16 Chavez is the former OCD supervisor in Aztec and the
17 appointee of the New Mexico Energy, Minerals and Natural
18 Resources Department Secretary Joanna Prukop.

19 To Mr. Chavez's left is Cheryl Bada. Cheryl is
20 going to be the acting Commission counsel today.

21 To Commissioner Bailey's right is Florene
22 Davidson. Florene is the Commission Secretary.

23 The court reporter, as always -- as almost
24 always, is -- today is Mr. Steve Brenner.

25 Let the record reflect that a quorum of the

1 Commissioners or their designees are present today.

2 * * *

3

4 CHAIRMAN FESMIRE: The first item on the agenda
5 is the minutes of the April 14th, 2005, Commission meeting.

6 Commissioners, have you had the opportunity to
7 review the minutes?

8 COMMISSIONER BAILEY: Yes, I have, and I move
9 that we accept them.

10 CHAIRMAN FESMIRE: Senator -- Commissioner
11 Chavez?

12 COMMISSIONER CHAVEZ: I was not present at that
13 meeting.

14 CHAIRMAN FESMIRE: Okay. I was present, I will
15 second Commissioner Bailey's motion to adopt the minutes.

16 All those in favor?

17 COMMISSIONER BAILEY: Aye.

18 CHAIRMAN FESMIRE: Opposed?

19 Let the record reflect that the minutes were
20 adopted as drafted, and returned to the Commission
21 Secretary.

22 * * *

23

24 CHAIRMAN FESMIRE: The second case on the docket
25 is Case Number 13,453, an Application for an order of the

1 New Mexico Oil Conservation Commission instituting
2 rulemaking, proposing amendments to OCD Rules 104, well
3 spacing and location, and 701.

4 The Commission counsel in this case is acting in
5 a different capacity today, but I'm going to ask Mr. Brooks
6 to explain where we are on that rule.

7 MR. BROOKS: Mr. Chairman, members of the
8 Commission, I believe that you have before you a proposed
9 order adopting that rule. I believe that the Commission
10 voted to adopt the rule at the conclusion of the hearing on
11 April the 14th, and the order was drafted by me with the
12 assistance of Cheryl Bada, and we recommend it for the
13 Commission's adoption pursuant to their resolution adopted
14 at the previous meeting.

15 CHAIRMAN FESMIRE: Commissioner Chavez, do you
16 have something to say about this order?

17 COMMISSIONER CHAVEZ: I have reviewed the case,
18 and -- the case file, and I would be in favor of signing
19 it. I would vote, however, to discuss a precedent where,
20 since I was not present for the testimony, that apparently
21 there is a practice in the OCD where if a Commissioner was
22 not present they would not sign the order. But I have no
23 qualms at all about the order itself, for the record.

24 CHAIRMAN FESMIRE: Counsel Bada, do you have any
25 recommendation to the Commission based on Commissioner

1 Chavez's concerns?

2 MS. BADA: Given what appears to be Commission
3 practice, not to having him sign, I would recommend that.
4 Otherwise, if it was a practice, I'd say as long as he
5 reviewed the record and the transcripts it wouldn't be a
6 problem.

7 CHAIRMAN FESMIRE: Okay, so your recommendation
8 is that --

9 MS. BADA: -- that he doesn't, given that's your
10 past practice.

11 CHAIRMAN FESMIRE: Commissioner Bailey, have you
12 had a chance to review the order?

13 COMMISSIONER BAILEY: Yes, I have, and I intend
14 to sign it.

15 CHAIRMAN FESMIRE: Okay, and I too believe that
16 we can sign it. So at this time I'm going to ask if
17 there's a motion to adopt the order as drafted.

18 COMMISSIONER BAILEY: I move we adopt the order
19 as drafted.

20 CHAIRMAN FESMIRE: And I will second. And let
21 the record reflect that while he agrees with the order,
22 Commissioner Chavez has decided not to sign it at this
23 time.

24 Let the record reflect that the order has been
25 signed by two of the Commissioners and transmitted to the

1 Commission Secretary.

2 * * *

3

4 CHAIRMAN FESMIRE: The next item on the agenda is
5 for the Commission to discuss the proposed amendments to
6 Rule 1201, 1203 through 1209, 1211, 1212 and 1220.

7 At this time I'll ask Counsel Bada to bring the
8 Commission up to speed on where these proposed amendments
9 stand.

10 MS. BADA: Changes have been made, mainly in
11 format, and it looks like probably the best way to approach
12 that will be through a repeal and replacement rather than
13 having extensive strike-through and underline. So we're
14 going to delay hearing that until, I believe, probably July
15 and re-notice it.

16 CHAIRMAN FESMIRE: Okay. And the revised
17 proposed Rules will be posted on the website?

18 MS. BADA: Right.

19 CHAIRMAN FESMIRE: And do you know when that will
20 be?

21 MS. BADA: I don't.

22 CHAIRMAN FESMIRE: Okay. But we intend to do
23 that within the next week?

24 MS. BADA: Hopefully.

25 MR. BROOKS: Mr. Chairman --

1 MS. BADA: I don't know that we'll have had a
2 chance to review the changes before we do that, so --

3 MR. BROOKS: I suspect it probably will not occur
4 until the week after next, because I believe it's important
5 to -- number one, that -- well, number one, I've been asked
6 to review some of the changes, and I do have some comments
7 on them.

8 And number two, I believe it's very important
9 that you have a chance to thoroughly review the draft
10 before it is placed in the public domain. And of course,
11 you know that you and I have some other commitments next
12 week, so it will probably not occur till the week of the
13 23rd.

14 CHAIRMAN FESMIRE: Okay, but we intend to post it
15 on the week of the 23rd, then?

16 MR. BROOKS: Hopefully, yes, and then -- to give
17 the public plenty of time to look at it and figure out what
18 we've done different from what we did -- what we proposed
19 before, before they have to come in.

20 CHAIRMAN FESMIRE: Okay. But it will be done in
21 plenty of time to have proper notice and everything at the
22 July meeting?

23 MR. BROOKS: That is correct, yes.

24 CHAIRMAN FESMIRE: Okay. If I hear no objection
25 from the Commission, that's what we intend to do.

1 Commissioner Bailey, do you have anything to say
2 about that?

3 COMMISSIONER BAILEY: Yes, I'll take time to
4 review them very carefully and have my input to you before
5 it goes out on the website.

6 MR. BROOKS: Thank you. Commissioner Bailey,
7 have you received the latest draft from Counsel Bada?

8 COMMISSIONER BAILEY: I believe so --

9 MR. BROOKS: Okay.

10 COMMISSIONER BAILEY: -- if it was from the last
11 e-mail a couple of days ago?

12 MS. BADA: I think I sent it out yesterday,
13 and --

14 COMMISSIONER BAILEY: Then I haven't.

15 MS. BADA: -- I was waiting on some answers
16 because I still have some blanks in there. So I haven't
17 circulated it --

18 COMMISSIONER BAILEY: Would you go ahead and send
19 it to me, please --

20 MS. BADA: I certainly will.

21 COMMISSIONER BAILEY: -- because I have the same
22 issues next week.

23 MS. BADA: Certainly.

24 CHAIRMAN FESMIRE: Commissioner Chavez, is that
25 acceptable to you?

1 COMMISSIONER CHAVEZ: Yeah, that schedule is
2 fine. I haven't received any draft copies or anything.

3 MS. BADA: I'll go ahead and --

4 COMMISSIONER CHAVEZ: Thank you.

5 * * *

6
7 CHAIRMAN FESMIRE: The next item on the agenda is
8 Case Number 13,351. It's an Application filed by Edge
9 Petroleum Exploration Company for a re-hearing of that
10 case, the Application of Edge Petroleum Exploration Company
11 to restrict the effect of special rules and regulations of
12 the Dos Hermanos Gas Pool in Eddy County, New Mexico.

13 Are the attorneys present for that?

14 Mr. Brooks, would you --

15 MR. BROOKS: I don't see them.

16 Mr. Chairman, members of the Commission, the
17 Commission issued an order in that case at its April 14th
18 meeting.

19 On May the 3rd, which I believe is within the 20
20 days, the Applicant filed a motion for re-hearing,
21 challenging the portion of the Commission's Order which
22 provided that in sections adjacent to the Dos Hermanos
23 field wells would have to be set back from the boundaries
24 of the Dos Hermanos field by a distance which I believe was
25 1250 feet or 1650 feet. I don't remember the figure --

1 CHAIRMAN FESMIRE: I believe it was 16.

2 MR. BROOKS: -- I don't have my notes in front of
3 me.

4 But the Applicant in the motion for re-hearing
5 raised principally the point that prior to the adoption of
6 Rule 104's infill provision permitting infill wells in 320-
7 acre Morrow spacing units, the Commission had in effect a
8 rule which provided for one well per 320-acre spacing unit
9 in the Morrow and did provide for a 1650-foot setback.

10 When the Commission adopted the infill rule, the
11 Commission changed the setback for the Morrow to the 660
12 feet and did not at that time provide that the -- well, the
13 660-foot setback applied, regardless of whether or not the
14 adjacent section had been developed under the previous
15 rules with the 1650-foot setback. And the Applicant urged
16 on that basis that Commission precedent suggested that we
17 should not have that special setback requirement.

18 Now, of course this is a decision -- if the
19 Commission wants to change its previous decision based on
20 that or not, then that's totally up to the Commission. As
21 counsel -- having acted as counsel in this case, I would
22 merely point out that the motion for re-hearing was filed
23 on May the 3rd.

24 If the Commission wishes to reconsider the
25 matter, it has several options. It can reconsider the

1 matter at this hearing and instruct counsel to prepare an
2 order in whatever way it wants to do, it can grant the
3 motion for re-hearing and set the matter for another
4 hearing at a later date, or it can grant the motion and set
5 the matter for reconsideration by the Commission at another
6 date. Or, of course, it can overrule the motion.

7 If the Commission takes no action, then the
8 motion which was filed on May the 3rd will be overruled by
9 operation of law on May the 17th, one week from Tuesday,
10 from last Tuesday, and the previous order of the Commission
11 will then become final.

12 CHAIRMAN FESMIRE: Okay. Mr. Brooks, the
13 question, to me -- is there any legal effect of our
14 adopting the new Rule 104 that would truly affect this
15 case, that would essentially mandate that we reopen this
16 case and re-evaluate the evidence?

17 MR. BROOKS: Well, I wouldn't say mandate. It's
18 just whether the Commission thinks that that is a
19 persuasive argument or not. In my view, Rule 104 applies,
20 once we -- at present, Rule 104 does not apply to the
21 sections adjacent to the Dos Hermanos field, because the
22 Dos Hermanos field rules apply and they pre-empt the
23 application of Rule 104.

24 Under the Commission's order adopted on April
25 14th, the Commission's order will be the effective rules

1 for the sections adjacent to the Dos Hermanos field, and
2 Rule 104 will apply to those sections only to the extent
3 that it is not -- only to the extent that it is not
4 inconsistent with the Commission's April 14th, 2005, order.

5 So there's actually no conflict or uncertainty
6 about what the rules will be, in my opinion. It's simply a
7 question of whether the Commission feels that this argument
8 based on the Commission's action in adopting Rule 104 and
9 how it then treated adjacent sections is a persuasive
10 precedent that would cause the Commission to reconsider its
11 treatment of this case.

12 CHAIRMAN FESMIRE: But under the oft-quoted Rule
13 11.B, the field rules that were in place that essentially
14 -- again, I try to use the word mandate, but essentially
15 guided our decision, have not been changed by the Rule 104,
16 have they?

17 MR. BROOKS: No. No, the field rules continue to
18 control over the statewide rules.

19 CHAIRMAN FESMIRE: Commissioner Bailey, do you
20 see any reason to reconsider this decision?

21 COMMISSIONER BAILEY: Yes, I do.

22 CHAIRMAN FESMIRE: Commissioner Chavez?

23 COMMISSIONER CHAVEZ: Initially, I don't see a
24 reason to reconsider it, because the pool rules that were
25 in effect for spacing are just basically still in place for

1 the adjacent acreage, only as it abuts the existing pool.

2 Had the operator wanted to change those rules for
3 the entire pool, I could see the -- if that had been part
4 of their Application, I could see why they'd want a re-
5 hearing. But I don't know that it would be helpful now to
6 re-hear it.

7 CHAIRMAN FESMIRE: I think, based on the
8 arguments in the motion for re-hearing, I think I agree
9 with Commissioner Chavez, you know, that the rules were in
10 place when the original V-F well was drilled, and I don't
11 feel inclined to re-hear at this level.

12 Are they able to appeal to a district court or to
13 the Secretary if we rule on this today, if we deny their
14 application today?

15 MR. BROOKS: Yes, Commissioner, they would be --
16 I would believe that their time for appeal would begin to
17 run -- if we deny it by written order, their time for
18 appeal would begin to run from today. If the Commission
19 takes no action, the time for appeal would begin to run
20 from May 17th.

21 CHAIRMAN FESMIRE: Okay. Is there a motion for
22 the disposition of this motion for re-hearing?

23 COMMISSIONER BAILEY: No.

24 COMMISSIONER CHAVEZ: No.

25 CHAIRMAN FESMIRE: No? At this time there is no

1 motion, so the Commission is not going to rule on the
2 motion for re-hearing today.

3 MR. BROOKS: Thank you.

4 (Off the record at 9:16 a.m.)

5 * * *

6

7 (The following proceedings had at 5:20 p.m.):

8 CHAIRMAN FESMIRE: With that, is there any
9 further business before the Commission?

10 COMMISSIONER BAILEY: Yes, the last case.

11 CHAIRMAN FESMIRE: Oh, the last case. I'm glad
12 you're awake.

13 The next cause on the docket is Cause Number
14 13,402. It's the consolidated Application of Loco Hills
15 Gas Storage Facility for an exemption to the liner and
16 leak-detection requirements of 19.15.2.50.C NMAC and
17 approval of Stage 1 and 2 Abatement Plans with provisional
18 alternate abatement standards, in Eddy County, New Mexico.

19 At the request of counsel, this case has been
20 continued to the June 9th, 2005, Commission hearing.

21 Now, is there any -- ?

22 With that, the Chair would entertain a motion to
23 adjourn, probably from Counselor Bailey [sic], who's got
24 her purse in her hand ready to go.

25 (Laughter)

1 COMMISSIONER BAILEY: I move we adjourn.

2 COMMISSIONER CHAVEZ: Second.

3 CHAIRMAN FESMIRE: All those opposed?

4 The motion has been moved, seconded, and passed.

5 The Oil Conservation Commission meeting is adjourned at
6 5:22.

7 (Thereupon, these proceedings were concluded at
8 5:22 p.m.)

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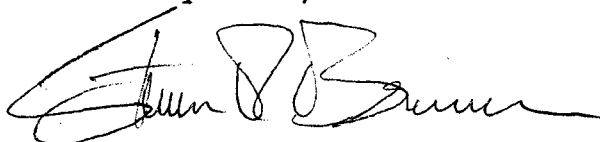
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL May 16th, 2005.

A handwritten signature in dark ink, appearing to read 'Steven T. Brenner', is written over a horizontal line.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006