

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

MEETING OF THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE
OF CONSIDERING:

ORIGINAL

Case 15366 De Novo
Motion in Case No. 15366, Application of Matador
Production Company, LLC, for a Nonstandard Spacing and
Proration Unit, Compulsory Pooling, and Nonstandard
Location, Lea County, New Mexico.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONERS MEETING

February 11, 2016

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
ROBERT S. BALCH, COMMISSIONER
PATRICK PADILLA, COMMISSIONER
BILL BRANCARD, ESQ.

RECEIVED OOD
2016 MAR - 1 P 1:14

The following matters were heard before the
New Mexico Oil Conservation Commission on Thursday,
February 11, 2016, at the New Mexico Energy, Minerals,
and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
NEW MEXICO CCR 100
CALIFORNIA CSR 8670
PAUL BACA COURT REPORTERS
500 Fourth Street, NW
Suite 105
Albuquerque, New Mexico 87102

I N D E X

1		
2		
3		Page
4	Roll Call	3
5		
6	Motion to Adopt Agenda of Hearing	4
7		
8	Motion to Approve Minutes of December 10, 2015, Meeting	4
9		
10	Adoption of Open Meetings Annual Resolution Pursuant to New Mexico Open Meetings Act	5
11		
12	Motion to Dismiss in De Novo Case No. 15366	6
13		
14	Motion for Executive Session	45
15		
16	Motion to Go Back on the Record	45
17		
18	Determination of the Commission to Grant Matador Production Company's Motion to Dismiss Appeal	46
19		
20	Hearing Adjourned	49
21		
22		Page
23	Reporter's Certificate	50
24		
25		

1 (Time noted 9:00 a.m.)

2 COMMISSIONER CATANACH: Good morning. This
3 is the meeting of the New Mexico Oil Conservation
4 Commission. My name is David Catanach. I am chairman
5 of the Commission. The time is 9:00 a.m. Today's date
6 is February 11, 2016. This meeting is being conducted
7 in Porter Hall within the Wendell Chino State Building.

8 I will take roll at this time.

9 All right. Will the Commissioners, please,
10 introduce themselves for the record.

11 COMMISSIONER PADILLA: Patrick Padilla,
12 designee of the Commissioner of Public Lands.

13 COMMISSIONER BALCH: Dr. Robert Balch,
14 designee of the Secretary of Energy and Minerals.

15 COMMISSIONER CATANACH: Thank you.

16 And also present today is Mr. Bill Brancard,
17 the Commission attorney and general counsel of the
18 Energy and Minerals and Natural Resources Department.

19 Commissioners, in your package, you should
20 have an agenda for today's meeting.

21 Do I hear a motion and a second to adopt the
22 agenda?

23 COMMISSIONER PADILLA: So moved.

24 COMMISSIONER BALCH. Seconded.

25 COMMISSIONER CATANACH: All in favor.

1 COMMISSIONER PADILLA: Aye.

2 COMMISSIONER BALCH: Aye.

3 COMMISSIONER CATANACH: Aye.

4 Also in your packet is a draft of the
5 minutes from the December 10th, 2015, Commission
6 meeting. Commissioners, do you have any changes to the
7 minutes? And if not, is there a motion and a second to
8 adopt the minutes?

9 COMMISSIONER BALCH: I have no changes, and
10 I would move to adopt them.

11 COMMISSIONER PADILLA: I likewise have no
12 changes and I second that.

13 COMMISSIONER CATANACH: Okay. All in favor.

14 COMMISSIONER PADILLA: Aye.

15 COMMISSIONER BALCH: Aye.

16 COMMISSIONER CATANACH: Aye.

17 Motion to adopt the minutes from the
18 December 10th meeting is passed.

19 The next order of business on the agenda is
20 the adoption of the Annual Open Meetings Resolution
21 pursuant to the New Mexico Open Meetings Act.

22 And I would -- Mr. Brancard, will you brief
23 us on that or how do we proceed on that matter?

24 MR. BRANCARD: It is the same resolution
25 that you've adopted in the past updated with the

1 meetings for this year. And I believe there has been a
2 fair amount of input to Ms. Davidson about what meeting
3 dates work for Commissioners. And so I think all that
4 has been resolved.

5 MS. DAVIDSON: (Nonverbal response.)

6 COMMISSIONER CATANACH: I see. So all we
7 have to do is just vote on it?

8 MR. BRANCARD: Yes.

9 COMMISSIONER CATANACH: Okay. Do I hear a
10 motion to adopt the Annual Open Meetings Resolution?

11 COMMISSIONER BALCH: I will so move.

12 COMMISSIONER PADILLA: I second that.

13 COMMISSIONER CATANACH: Okay. All in favor.

14 COMMISSIONER PADILLA: Aye.

15 COMMISSIONER BALCH: Aye.

16 COMMISSIONER CATANACH: Aye. Motion has
17 passed to adopt the Annual Open Meetings Resolution.

18 And just for your information,
19 Commissioners, there are four cases on the docket today
20 regarding COG Operating, LLC's, application for
21 nonstandard spacing and proration units and compulsory
22 pooling.

23 These are cases 15105, 15281, 15282, and
24 15283. These cases were dismissed at the request of the
25 applicant prior to today's hearing. And orders

1 dismissing each of these cases were prepared and signed
2 by myself prior to today's hearing. So those cases are
3 all dismissed.

4 The next item on the agenda is the motion to
5 dismiss in de novo case No. 15366. And by way of a
6 little background, Matador presented this case 15366,
7 which was their application for a nonstandard spacing
8 and proration unit, compulsory pooling at a nonstandard
9 well location at an Examiner Hearing on September 3rd,
10 2015.

11 As a result of that order -- as a result of
12 that case, order R-14097 was issued by the Division on
13 December 14, 2015. Amtex Energy, Inc., a pooled party
14 in case 15366, filed for a de novo hearing in case
15 No. 15366. Matador has since filed a motion to dismiss
16 the Amtex appeal in this case.

17 And it is my understanding that the
18 Commission today will only hear arguments with respect
19 to the motion to dismiss and a response.

20 With that, we will proceed with arguments.
21 And can we limit those to maybe 20 minutes per party?

22 MR. DeBRINE: I don't think it will take
23 that long, Mr. Chairman.

24 COMMISSIONER CATANACH: Thank you. And you
25 may proceed, Mr. DeBrine.

1 MR. DeBRINE: Yes. Earl DeBrine with the
2 Modrall Sperling firm for the applicant Matador
3 Production Company.

4 Good morning, Mr. Chairman, Commissioner,
5 Padilla, and Commissioner Balch.

6 May it please the Commissioner, Matador
7 believes what Amtex is asking the Commission to do is
8 something that is truly extraordinary. First, it's
9 asking the Commission to upset the legislator's careful
10 Division authority when it enacted the Oil and Gas Act,
11 establishing both an Oil and Gas Conservation Division
12 and a separate Oil and Gas Conservation Commission and
13 provided for an evidentiary hearing process before the
14 Division with which parties who have an interest in the
15 proceeding are required to appear and present any
16 objections in favor -- or testify in favor or in
17 opposition to what the applicant is seeking and also the
18 Legislature when it vested the Commission with authority
19 to its rules and procedure for matters appearing before
20 the Division and Commission.

21 We believe that Amtex is essentially asking
22 the Commission to rewrite its rules so that anyone who
23 by Division rules is entitled to notice of an
24 application and the applicant therefore notices that
25 party, that they can ignore the remaining Division

1 rules, fail to enter an appearance before a hearing,
2 fail to show up for a hearing and while the matter --
3 and after the hearing is held, while the matter before
4 the order is entered when the Division Director and the
5 Examiner are considering the evidence presented, to just
6 simply enter an appearance and then render the whole
7 process a nullity by filing a late entry of appearance
8 and then filing an appeal de novo to the Commission.

9 Third, we believe that the reason they are
10 asking the Commission is to essentially mount what we
11 view as a baseless challenge to the Commission's
12 authority with regard to its rule that's been in place
13 since 2003 concerning the presumptive 200 percent risk
14 penalty and the Commission's horizontal well rules that
15 were enacted back in 2012 and well established Supreme
16 Court precedent in the Rudder vs. Wilbanks case, which
17 held the Commission clearly as the authority to
18 establish large nonstandard spacing units.

19 And, pursuant to that authority, the
20 Commission enacted its horizontal well rule to provide
21 for horizontal well development and the amalgamation of
22 separate spacing units to create nonstandard spacing
23 units for horizontal well development.

24 And over the last five years, there has been
25 dozens and dozens and maybe hundreds of pooling cases

1 that have come before the Division recognizing that
2 authority and orders entered.

3 And what Amtex is doing is it's placing
4 everything the Commission and Division have done in
5 compulsory pooling cases at risk by its contention and
6 coming in late to challenge the Commission's authority
7 to establish nonstandard spacing units for horizontal
8 well development.

9 We believe that the Division's rules
10 regarding adjudicatory hearings are clear and
11 straightforward.

12 You have in front of you what Mr. Gallegos
13 provided, which is a copy of Rule 19.15.4.10, which is
14 Exhibit 8 in the notebook.

15 And it provides for three categories of
16 parties. One is the applicant, the second is a person
17 to whom statute, rule, or order requires notice, not
18 including those persons who 19.15.9.9 requires
19 distribution of hearing notices who are not otherwise
20 entitled to notice of a particular application. But,
21 then, there's the qualification at the end, which is
22 critical, "who has entered an appearance in the case."

23 And third is a person who properly
24 intervenes in the case.

25 Everything that is within the rule and what

1 follows is what you have to do to achieve party status.
2 You either have to enter a written entry of appearance
3 before the hearing or you have to show up for the
4 hearing and appear as a party of record, and it's so
5 noted at the hearing process.

6 The integrity of the hearing process is
7 premised on the idea that the Division in the first
8 instance will consider all the evidence, all the
9 argument, and determine whether the application has
10 merit, whether to grant the application.

11 And if the party wants to object to what the
12 Division might do, first and foremost, it has to show
13 up. Amtex never did that. They acknowledged they
14 received proper notice of Matador's application. They
15 sat on their hands. They've never offered an
16 explanation as to why they wanted 22 days after the
17 hearing to file an entry of appearance.

18 And if you look at the entry of appearance,
19 which is also in the notebook, all they did was file a
20 written entry of appearance. At that point, they didn't
21 take issue with anything that was before the Division in
22 Matador's application. They didn't raise any legal
23 issues in their entry of appearance.

24 The only reason it was -- it came -- the
25 reasons they were trying to object came out is because

1 Matador filed a motion to quash the entry of appearance.
2 And the Division, properly, when it entered its order in
3 the case below ruled on Matador's motion to dismiss.

4 And in paragraph 12 of the findings of the
5 Division, the Division concluded the filing of the entry
6 of appearance by Amtex was 22 days following the formal
7 hearing of case No. 15366, and the documents showed
8 three return cards addressed to Amtex and returned to
9 the applicant, and, then, an endorsed delivery date of
10 August 12th.

11 Applicant testified that additional attempts
12 to contact Amtex by phone were unsuccessful.

13 Based on the delivery date of the receipt
14 cards, Amtex received proper notice within the 20-day
15 requirement found in Division Rule 19.15.4.9(B).

16 Additionally, Amtex made no effort following
17 notice to enter an appearance to protest or to request a
18 continuance of the case to adequately prepare a protest
19 of the application. Therefore, entry of appearance
20 submitted by Amtex was not timely and should not be
21 considered.

22 And it is clear within the rules, if you
23 look at Rule 19.15.4.1, when it delineates what a person
24 has to do to enter an appearance and be entitled to
25 participate in the hearing process as a party of record,

1 if it wants to do that, it has to file a written notice
2 of appearance with the Division clerk. And if it fails
3 to do that one business day, in subsection C, prior to
4 the prehearing statement filing date, it shall not be
5 allowed to present technical evidence of the hearing
6 unless the Commission Chairman or the Division Examiner
7 for good cause otherwise directs.

8 And, then, in D, it's clear what the intent
9 of the rule is. It provides: A party shall be entitled
10 to continuance of any hearing if it did not receive
11 notice of the hearing at least three business days prior
12 to the date for filing a timely appearance as 19.15.4
13 provides.

14 And it's clear the intent of the rule
15 practice over many, many years since the rule was
16 enacted, to have a timely entry of appearance, you have
17 to file a written entry of appearance before the hearing
18 or at least show up. And Amtex never showed up.

19 So we believe that the Division correctly
20 concluded in its order that Amtex didn't do what it
21 needed to do if it wanted to be a party of record in the
22 case, and so that its entry of appearance was nulled
23 back and it has no right under the Oil and Gas Act nor
24 under the Commission's rules to appeal the Division
25 orders.

1 If it were otherwise, the Division's rules
2 would be rendered -- for adjudicatory hearings would be
3 rendered meaningless, because the Commission would end
4 up doing all the work that the Legislature entrusted
5 with the Division. If somebody could just sit back, the
6 parties go to the time and expense, the Division goes to
7 the time and expense associated with holding an
8 evidentiary hearing and deliberations, and, then,
9 somebody comes in before the order is entered and says,
10 Oh, never mind. We are going to take this up with the
11 Commission. That is not what the rules required. That
12 is not what Amtex did, and so it's not a party of record
13 and it shouldn't be allowed to appeal de novo to the
14 Commission.

15 We believe and we've cited authority in our
16 briefs that, in the context of judicial proceedings, the
17 appellate courts of New Mexico has held that a party who
18 fails to participate in the hearing below doesn't have a
19 right to try and upset the apple cart through an appeal
20 process.

21 You have to participate. Amtex never did
22 it.

23 And it not only failed to follow the
24 Commission's rules for entering an appearance before the
25 hearing or showing up at the hearing, but what it's

1 really asking the Commission to do is to act on what
2 really are frivolous arguments concerning the
3 Commission's risk rule and the Commission's authority to
4 order nonstandard spacing units for horizontal well
5 development.

6 Its reading of the rules is that it's just
7 raising legal issues. It doesn't have to file a timely
8 entry of appearance before the hearing; it can step in
9 at any time.

10 That's not what the rules provide nor is
11 that what's at issue in this case. The risk penalty to
12 be assessed when the compulsory pooling order is being
13 entered is a technical issue in every case.

14 The Commission, back in 2003, established a
15 rule which provided for a 200 percent presumptive risk
16 penalty, but it recognized that the appropriate penalty
17 is considered on a case-by-case basis. All it did is
18 require someone who is objecting to the 200 percent
19 penalty to provide notice to the applicant and to the
20 Division so that the parties are prepared and can
21 address that at the evidentiary hearing.

22 We were unable to do that because Amtex
23 never entered its appearance, never filed a prehearing
24 statement, and so the technical evidence that --
25 although Matador did testify, did provide testify to

1 justify the 200 percent risk provision that was entered,
2 included in the Division's order, it would have been
3 under a different process. And the Division director
4 recently considered a dispute where the risk penalty was
5 properly placed at issue. And that adds another couple
6 of hours to the hearing.

7 And when the Division enacted its rule of 35
8 back in 2003, by order R-11992, it was done based on
9 testimony by industry and the Division's Chief Hearing
10 Officer Michael Scotner as to why the process concerning
11 the application of the appropriate risk penalty wasn't
12 working and why the Commission needed a new rule to
13 provide for a presumptive penalty and a process for
14 addressing the appropriate penalty.

15 If I may approach, I've got a copy of the
16 order that was entered in that case when Rule 35 was
17 adopted. And there are some pertinent findings that I
18 think are appropriate and are equally applicable today
19 and show why that if Amtex wants to take issue with Rule
20 35, the 200 percent presumptive risk penalty, the
21 appropriate avenue to do that is file an application to
22 change the rule, because nothing has changed from 2003
23 until today in 2016.

24 If you look at Finding No. 9, the Commission
25 found, Mr. Scotner testified the compulsory pooling

1 hearings constitute a large part of the Division's
2 hearing docket and eliminated the portion of each
3 hearing dealing with the factors to be considered, and
4 assessing the risk charge would significantly reduce the
5 length of compulsory pooling hearings, would obviate the
6 necessity, in most cases, of operators bringing expert
7 geologic or engineering witnesses to the hearing and
8 would significantly reduce the costs associated with
9 such hearings both for the Division and the parties,
10 because the Division was just getting bogged down within
11 every case with parties fighting over the appropriate
12 risk penalty.

13 And in every case, the standard 200 percent
14 risk penalty was assessed, as demonstrated in the
15 Commission's Finding No. 37, which says, The evidence
16 demonstrates the decisions regarding the risk charge be
17 assessed or appropriately made in accordance with more
18 or less uniform guidelines that apply to broad
19 categories of cases.

20 The specific technical testimony in
21 particular cases played a relatively limited role in the
22 decision-making process.

23 Accordingly, the adoption of risk charges by
24 rule, the provision for exceptions of particular cases
25 where a party seeks an exception and offers sufficient

1 supporting evidence is an appropriate approach and such
2 a rule should be adopted.

3 And, then, in Paragraph 38 of the
4 Commission's findings they said, The evidence
5 demonstrates that the maximum 200 percent risk charge is
6 appropriate in the vast majority of cases, is actually
7 being assessed by the Division in the vast majority of
8 cases and is equal to or less than the risk charge
9 factors customarily provided in voluntary agreements
10 negotiated between active industry participants.
11 Accordingly, the maximum 200 percent risk charge should
12 be provided by rule except in cases where specific
13 reasons exist to provide a lesser charge.

14 And so the Commission adopted Rule 35. And
15 consistent with its rules concerning evidentiary
16 hearings provided in the rule that, if a party was to
17 challenge the 200 percent penalty, it had to file a
18 prehearing statement and it had to place the hearing
19 examiner and the applicant on notice that it was going
20 to take issue with the penalty so that the parties were
21 prepared to address the technical testimony, what the
22 more appropriate risk penalty might be.

23 Amtex didn't do that. They are not entitled
24 to challenge the risk penalty that was assessed by the
25 Division in its order. They failed to follow the rules

1 and, therefore, they're not a party of record, they're
2 not entitled to bring that challenge at all.

3 Now they claim that they are just making a
4 legal argument with regard to the risk charge that was
5 assessed by the Division. And that's clearly
6 inappropriate. The basis for that argument is they
7 point to the fact that a prior well was drilled by
8 Matador on adjacent acreage.

9 But in order to make that argument, you've
10 got to consider the characteristics of that well, the
11 proximity of that well, the production of that well, the
12 geological characteristics of that well compared -- with
13 regard to the well that was the subject and the matter
14 of this application and decide, Well, does that actually
15 eliminate the risk associated with drilling a well or
16 doesn't it?

17 And it's interesting because in Rule 35 the
18 Commission even addressed the situation where an
19 applicant has actually drilled a well before it goes to
20 hearing. And in its findings, No. 41, it found that an
21 applicant who has drilled a new well prior to applying
22 for compulsory pooling has assumed a risk no less than
23 would have been the case had drilling been deferred
24 until after the entry of a pooling order, but, instead,
25 has occurred in addition to the economic risks otherwise

1 associated with the operation, the legal risk, the
2 Division may deny or limit its risk and charge
3 recovery.

4 And then it found in paragraph 42: In such
5 cases, it's not the applicant but the pool party whose
6 risk is reduced -- which is Amtex here -- due to the
7 opportunity afforded to the pool party by statute to
8 participate on a heads-up basis without any risk charge
9 by electing to advance its cost of drilling after the
10 pooling order is entered based on information developed
11 by the drilling and not known to the applicant at the
12 time the decision to drill is made. Accordingly, the
13 maximum 200 percent risk charge should ordinarily be
14 applied in such cases.

15 And so the Commission went and adopted Rule
16 35, addressed the legal argument of Amtex that it's
17 trying to make in this case, although clearly its
18 complaint about the risk charge is a complaint about the
19 technical issues that require the presentation of
20 evidence in compliance with the Division's rules for
21 prehearing statement and notice to the party and to the
22 hearing officers.

23 With regard to its other argument, that the
24 Division lacks authority to pool contiguous, separate
25 spacing units to form a project area and nonstandard

1 spacing units for the development of a horizontal well,
2 that question was answered back in 1975 in the Rudder
3 vs. Wilbanks case, where the Supreme Court said, It
4 would be absurd to hold the Commission does not have
5 authority to pool separately owned tracts within an
6 oversized nonstandard spacing unit.

7 The Division and Commission have recognized
8 its authority and exercised that authority in dozens and
9 dozens of cases in order to form nonstandard spacing
10 units for horizontal wells that are comprised of
11 separate spacing, 40-acre spacing units when it comes to
12 an oil well, because the Commission and Division are
13 charged by the Legislature with the obligation to
14 prevent waste and protect correlative rights. And in
15 every single case -- and the Commission decided not to
16 do it by rule -- said if you want to bring compulsory
17 pooling, you have to present the evidence and it's
18 necessary to show that what you are trying to do through
19 the amalgamation of separate tracts and obtain a pooling
20 order from the Commission that it's justified on the
21 facts; that it's going to prevent waste, that it will
22 prevent the drilling of unnecessary wells and that
23 correlative rights will not be impaired.

24 Now Amtex argues in its legal papers, that
25 its correlative rights will be impaired. But there's no

1 basis for that. How do we know that? It didn't show
2 up. It didn't present technical evidence.

3 If it was concerned about its correlative
4 rights, that evidence should have been presented in
5 accordance with the Commission's rules and the Hearing
6 Examiner could have considered whatever evidence it had,
7 Matador could have brought additional evidence, if
8 necessary, to establish the necessity for its
9 application and the Hearing Examiner could have made a
10 recommendation to the Division Director and the Division
11 Director made the call as to whether the application
12 should be granted or not.

13 But Amtex didn't show up. They didn't
14 present any technical evidence as to how their
15 correlative rights were impaired.

16 Instead, they showed up 22 days later and
17 want to say, Never mind, what you guys did doesn't
18 matter. You wasted your time. We are going to appeal.

19 The Commission rules, we believe, are clear.
20 It doesn't have the right to do that. It is not a party
21 of record. It came in too late, and it doesn't have a
22 right to appeal the Division's order.

23 And the motion to dismiss its appeal should
24 be granted. Thank you.

25 MR. GALLEGOS: Mr. Chairman.

1 COMMISSIONER CATANACH: Mr. Gallegos.

2 MR. GALLEGOS: Thank you, Mr. Chairman and
3 members of the Commission. I am Gene Gallegos. I am an
4 attorney in Santa Fe representing Amtex. And I have
5 with me here today Bill Savage, who is Amtex's owner,
6 president, engineer, everything to do with it.

7 First of all, I am a little puzzled because
8 counsel for Matador has spent more time on the merits
9 than on the motion to dismiss. Matador requested that
10 only the issue of party on the motion to dismiss be
11 heard at this time. We thought that made sense. Why go
12 into the merits? Let's get over this hump first and
13 then go on, so I'm going to address the -- what I
14 thought the issues were to be heard here today.

15 First of all, let me say -- and I just
16 received -- my office received -- I had a commitment out
17 of the office, but I read this morning something that
18 came in about 5:00 last night. And this is a reply from
19 Matador. And at page 2, it tells the whole story,
20 because in caps there's argument that says, Amtex is not
21 entitled to appellate review of the Division's decision
22 because it was not a party of record.

23 Wrong on both counts.

24 First of all, let's have an understanding
25 that seems to escape Matador, the difference between an

1 appellate review and a de novo proceeding. An appellate
2 review -- and much mention was made of what the Division
3 did below, which has no place here, no place whatsoever.

4 An appellate review is, for example, when a
5 district court makes a decision and there is an appeal
6 to the Court of Appeals of the Supreme Court and the
7 transcript below, what the court did below, is
8 considered the evidence and so forth. And the appeal
9 determines whether the lower court was right or wrong.

10 That's not the situation with a de novo
11 proceeding. The Legislature determined many, many years
12 ago in the Oil and Gas Act that when a case goes to this
13 Commission on a de novo application, it's exactly that.
14 "De novo" means new, afresh. You start over at the very
15 beginning.

16 And, in fact, that happens in cases. And
17 we've had experience, and I think Chairman Catanach's
18 certainly familiar with -- I remember the Whiting,
19 Pendragon case, a week of hearing before the Division,
20 witnesses from out of town, from everywhere, when it
21 goes de novo, you start from the beginning. It didn't
22 matter anything as to what happened below.

23 So let's understand what the proceeding is
24 and not be distracted by this idea of Matador, that
25 someday we are supposed to be talking about what

1 happened at the Division level.

2 Now, what the rule says and what it does not
3 say is important. First of all, in the notebook that I
4 placed before you today, let me ask you to just flip to
5 Exhibit No. 1, tab 1. This is taken from Matador's
6 application. This is Exhibit A. And it reads, Matador
7 Production Company Notice List, Parties to be Pooled.
8 And, of course, Amtex Energy appears there with a very,
9 very large interest.

10 Next flip to number 2. There is an entry of
11 appearance at the Division filed by Amtex. Clearly, no
12 dispute, it was filed after the Division hearing took
13 place. But there is an entry of appearance.

14 Now, let's ask you to turn to tab 8 and
15 let's see what the rule really says. This is Rule
16 19.15.4.10. It is entitled, Parties to Adjudicatory
17 Proceedings: (A) The parties to an adjudicatory
18 proceeding shall include -- and I go to subsection 2 --
19 a person to whom statute, rule, or order requires
20 notice --

21 So that's saying who, the question of who,
22 and we already know from what I have shown you and what
23 Matador did by way of notice that Amtex is such a party,
24 required a notice.

25 And then it goes on to say, "...and who has

1 entered an appearance in the case."

2 And it doesn't say entered an appearance in
3 the case before the hearing, at the hearing, no such
4 thing.

5 Let's then go to B, because that's not
6 mentioned but very important, because it says, A person
7 entitled to notice may enter an appearance at any
8 time -- not on Matador's version of rewriting the rules
9 as to when -- a person may enter an appearance at any
10 time by filing a written notice of appearance with the
11 Division or the Commission clerk.

12 So the first entry of appearance, which can
13 be at any time, can be with the Commission, not even the
14 Division.

15 So that rule has been complied with. That
16 has been the rule enacted under the statute 70-2-23,
17 says that, After hearing, rules may be adopted by the
18 Commission.

19 And that is the rule. And that has been
20 complied with.

21 Now, there is subsection C. And we are not
22 ignoring it. But Matador, in all of its papers, has
23 never mentioned A and B of this rule, has never quoted
24 it, never mentioned it, always gone to C and said, Well,
25 if you're going to present technical evidence, the rule

1 says you are supposed to say in advance you are going to
2 do that.

3 But we are not challenging the geology. We
4 are not saying the isopach maps weren't appropriate. In
5 fact, we say the Bone Spring formation that's in
6 question is an excellent reservoir. Already proven.
7 The geology is proven, the reservoir is proven. There's
8 a well in the east half, east half of the section. So
9 that's not the question.

10 What we would be talking about are the legal
11 issues, the issue of the authority of the Commission to
12 approve these project areas under the spacing
13 requirements of the statute. And so those are the
14 issues that would come forward.

15 So we have complied in every respect with
16 the rule. The regulation, like it or not, which Matador
17 doesn't, but this idea that you have to do something
18 other than what the rule says just simply isn't in the
19 rule.

20 So Amtex is a proper party. I am not going
21 to spend the time that Matador's counsel did on what the
22 legal issues are. I will make a brief remark on that.
23 But, basically, simply all this Commission has to do at
24 this time is say Amtex is a party, it's filed an
25 application for a de novo hearing, and at the

1 appropriate time, we will hear the merits of the
2 arguments and the issues that Amtex is raising.

3 I just do want to remark very briefly,
4 because I am not going to go into it at length. Let's
5 talk just a minute about Rule 35 that says, Any
6 applicant who comes in just gets a 200 risk penalty,
7 that's it, you don't have to do anything, you get a 200
8 percent risk penalty.

9 The court in Viking Petroleum versus Oil
10 Conservation Commission in 100 New Mexico 451 said --
11 and I quote: The percentage risk charge to be assessed,
12 if any, are determinations to be made by the Commission
13 on a case-to-case basis and upon the particular facts in
14 each case -- instead of just saying, Automatically you
15 get a 200 percent risk penalty because you are
16 compulsory pooling.

17 Rule 35 violates the rule that a Division or
18 Commission order cannot stand without finding support by
19 evidence. That goes back to Continental Oil versus the
20 Commission way back in 19 -- whenever that decision was.
21 And you have to have evidence. You can't just
22 automatically by a rule be handed a 200 percent risk.

23 We will go into it. We will present the
24 authorities on this in depth concerning that.

25 And then the question here concerning

1 Rudder, Wilbanks -- and I'm not going to go into a
2 complete discussion of that decision. It doesn't apply.
3 Rudder, Wilbanks was a strange -- involved a strange
4 640-acre section that was not 640 acres. It was 780
5 acres or something.

6 And the argument was -- and it was approved
7 by the Court -- that the Commission could make a
8 nonstandard spacing unit that was actually more than the
9 320 because of the strange situation of the section, of
10 the survey section.

11 That does not support at all what the
12 Commission has done. And members of this Commission --
13 it has come the time because in 2012 when the Commission
14 decided, Let's do something about we'll call them
15 project areas, because operators are wanting to drill
16 horizontal wells and drill them basically occupying 160
17 acres with their laterals.

18 This Commission at that time basically said,
19 You know, we don't know about our authority to allow
20 this. It hasn't been decided.

21 I am going to quote to you from the order of
22 this Commission, R 13499, issued January 23, 2012. Here
23 is what the Commission said and recognized in paragraph
24 73: However, the extent of the Commission's and the
25 Division's authority to establish nonstandard spacing or

1 proration units or special spacing or proration for
2 horizontal wells has not been clearly delineated by
3 either judicial or Commission precedent.

4 Paragraph 74: Accordingly, the Commission
5 concludes that it would be inappropriate to adopt a rule
6 on this subject at this time.

7 Paragraph 75: In order to forestall any
8 possibility that the rule amendments being adopted would
9 be construed to authorize compulsory pooling of
10 horizontal well -- quote -- "project areas" -- end
11 quote -- without regard to applicable statutory and
12 regulatory limitations, the proposed rule should not be
13 adopted and the change discussed in paragraph 60 should
14 be adopted.

15 And as a result, the rule says, if you've
16 got voluntary agreements, you can form the nonstandard
17 project areas. When it comes to compulsory pooling in
18 those areas -- and let's face it. 99 percent of the
19 applications are not objected to, are not protested.
20 So, you know, the Division goes ahead and forms those
21 units and nobody is the worse for it because nobody
22 objected to it.

23 But when it comes down to the situation that
24 we're dealing with here, finally this chicken has come
25 home to roost so to speak. And we'll go into that at

1 length. This is not a hearing on the merits.

2 But the Commission in 2012, in a sense,
3 said, We're not sure about this. We are putting this
4 off.

5 And what we are saying, members of this
6 Commission, is Amtex is raising them, and it's going to
7 have to be faced as to the authority.

8 At some time -- and I realize, full well,
9 that the industry and the technology of the industry
10 usually gets way out ahead of the law and way out ahead
11 of the Legislature. And it's quite appropriate that
12 horizontal oil production and oil drilling is taking
13 place.

14 It's just our Oil and Gas Act doesn't
15 accommodate it. You need some legislation. Because
16 right now what is being done is not authorized by the
17 statute.

18 Again, I say at length that matter can be
19 addressed, the case law and everything at the proper
20 time. Right now the only issue is is Amtex entitled to
21 have this de novo proceeding as a party. And we say
22 under the rules of the Commission and, particularly,
23 under the rule that I read to you, the answer is yes.
24 And that's all that's before you today.

25 Thank you, Commissioners.

1 COMMISSIONER CATANACH: Thank you,
2 Mr. Gallegos. There may be a couple of questions.
3 Mr. Brancard.

4 MR. BRANCARD: I have one question, the same
5 question for each counsel.

6 In my opinion, the key to understanding the
7 decision the Commission has to make is to look at the
8 rule, Section 10(B), the Commission has to interpret the
9 phrase "at any time."

10 I would like each of you to give me an
11 explanation of what "at any time" means in order for the
12 Commission to make a decision in this case.

13 Mr. DeBrine.

14 MR. DeBRINE: Yes, Mr. Brancard. I would be
15 happy to do that.

16 If you look at the rule, look at its title,
17 it says, Parties to Adjudicatory Proceedings. What the
18 whole rule is designed to address is how you become a
19 party to a hearing in front of the Division pursuant to
20 the Oil and Gas Act and the Commission's rules with
21 regard to adjudicatory hearings before the Division.

22 And A, B, C, and D is the rule that was
23 enacted to provide the procedures in order to become a
24 party of record.

25 And in paragraph B, it just says, A person

1 entitled to notice may enter an appearance at any
2 time -- but that phrase, although it is broad, has to be
3 read in context with regard to the other provisions in
4 Rule 19.15.4.10.

5 And when you read it in context, it's
6 clearly intended and has been applied time and time
7 again by the Commission -- and Mr. Gallegos didn't bring
8 to the Commission's attention a single case in which
9 somebody came in way after the hearing and tried to
10 appeal and establish status as a party of record -- that
11 in order to be a party of record, you have to do it
12 through two procedures: You have to enter your written
13 entry of appearance in accordance with the rule before
14 the hearing or you can show up at the hearing by oral
15 appearance on the record at the hearing.

16 And then when you look at C, it provides
17 that if you don't enter your written appearance and file
18 a prehearing statement, you can still show up for the
19 hearing, but you're not allowed to present technical
20 evidence at the hearing unless the Commission Chairman
21 and the Division Examiner for good cause otherwise
22 directs.

23 There's never been any demonstration of good
24 cause as to why Amtex should be allowed to step in
25 22 days later, much less have tried to do so at the

1 hearing to participate and make arguments with regard to
2 the 200 percent risk charge or the Division's authority
3 for compulsory pooling for project areas for horizontal
4 well development.

5 Then if you look at D, it also says that a
6 party shall be entitled to a continuance if it did not
7 receive notice of the hearing at least three business
8 days prior to the date for a timely appearance.

9 I mean that whole provision would be
10 meaningless, the reference to a timely appearance, it
11 clearly refers to an appearance made before the hearing
12 is held, otherwise why would you be asking for a
13 continuance of the hearing.

14 The interpretation that Amtex is putting
15 forward would render paragraph D superfluous. It would
16 also render paragraph C superfluous. And it is
17 meaningless.

18 It is clearly understood that "any time"
19 means any time before the hearing is held.

20 Then if you also look at the rule regarding
21 intervention, it also provides timing when an
22 intervening party has to intervene. I brought a copy of
23 that, too. And I will present that.

24 I don't know if I brought enough copies. I
25 will just read from that. And it's Rule 19.15.4.11.

1 And it again talks about adjudicatory proceeding
2 interventions. The whole idea is you are going to have
3 a hearing, you are going to have an adjudication, you
4 are going to have presentation of evidence, testimony,
5 and argument to make a decision.

6 And an intervenor, there's rules with
7 regards to when they have to file their notice of
8 intervention in order to participate in the hearing
9 process. And similar to the requirement of somebody who
10 is opposing the application, paragraph A says, A person
11 withstanding with respect to the case subject matter may
12 intervene by filing a written notice of intervention
13 with the Division or Commission clerk as applicable.

14 And all that means is are you intervening at
15 the Division level or are you intervening at the
16 Commission level? Because the rule doesn't
17 differentiate between Commission and Division hearings.
18 So it just depends on which forum you're in, whether you
19 are in the Division or whether you're in the Commission
20 as to what clerk you are dealing with. And everybody
21 knows that it's the same clerk, Florene, for both the
22 Division and the Commission.

23 And so it provides that, As applicable, at
24 least one business day before the date for filing a
25 prehearing statement -- which is in the rules and it's

1 four business days before the hearing is held under the
2 prior rule.

3 And then it provides what the notice of
4 intervention shall include. And then that rule also
5 includes provision B, that the Division Examiner and
6 Commission Chairman may at their discretion allow late
7 intervenors to participate if the intervenor files a
8 written notice on or after the date provided in
9 subsection A of 19.15.4.8 NMAC.

10 And what that references is the rule that
11 says when you file an application, you have to file it
12 thirty days before the hearing is going to be held.

13 It is all tied to when the hearing is going
14 to be held. If you want to be heard, if you want to be
15 a party, it is clearly understood in the rules and has
16 been understood by everyone who has participated in the
17 Commission/Division hearing process, that you have to do
18 it before the hearing. Otherwise, it's meaningless.

19 The whole purpose -- the Legislature
20 established two separate divisions and commissions; you
21 have a hearing in front of the Division first; if you
22 don't like it and you participated and you showed up and
23 complied with the Commission's rules for doing so, you
24 have a right to appeal de novo to the Commission.

25 Amtex didn't do that. They are not a party

1 under the clear meaning of the Commission's rules
2 concerning parties to adjudicatory hearings, and so
3 their appeal was a nullity and of no effect.

4 MR. GALLEGOS: The proceeding before the
5 Division under the de novo standard is meaningless.
6 Everything that Matador's counsel has just said is
7 placing the total importance, the priority, the
8 supremacy of what happened at the Division with a
9 complete misunderstanding, innocently or intentionally,
10 of what "de novo" means.

11 So to address the question directly at any
12 time means that that appearance, written appearance can
13 be at any time within what the rules say -- the only
14 other rule that's applicable -- which we haven't talked
15 about but it is at tab 8 of your book -- it's
16 19.15.4.23. It says on a de novo application, the
17 application has to be within 30 days of whenever the
18 Division hearing has taken place that the party is
19 aggrieved by. That is a time limit because it does
20 definitely apply.

21 And our application for de novo could have
22 been accompanied by the entry of appearance. The entry
23 of appearance was filed, of course, much earlier, back
24 in September. But this is actually in the rules a day's
25 limitation that applies.

1 But, otherwise, why would you have under
2 section B the right to file your notice of written
3 appearance not in the Division but you can file it with
4 the Commission under B?

5 These have to be given a meaning instead of
6 just the idea that Matador thinks, Oh, you've got to
7 come to the hearing, you got to participate in the
8 hearing, whatever happens at the Division is all
9 important.

10 Again, we know it's not all important. We
11 know of cases that we have been in this hearing room
12 that whatever happened at the Division, you start all
13 over. And that's why I mentioned that Pendragon,
14 Whiting case, because that was one that involved a week
15 hearing at the Division and probably a longer hearing in
16 the Commission because that's what de novo is all about.

17 We are not talking about a review. We are
18 not talking about an appeal of what the Division did.
19 It is insignificant because we start fresh. With this
20 Commission, you are at ground zero on what issues Amtex
21 wishes to raise. Amtex is properly a party before the
22 rule as written. And the rules are to be applied based
23 on what their plain language states.

24 COMMISSIONER CATANACH: Any questions?

25 COMMISSIONER BALCH: Mr. Gallegos, on what

1 date did Amtex file for the de novo hearing with the
2 Commission?

3 MR. GALLEGOS: On January the 7th.

4 COMMISSIONER BALCH: Thank you.

5 MR. GALLEGOS: I think the Division decision
6 was on December 15th.

7 COMMISSIONER BALCH: 14th.

8 MR. GALLEGOS: Okay. 14th.

9 COMMISSIONER CATANACH: I have a question
10 for Mr. Gallegos. You reference "at any time." So in
11 your opinion, Mr. Gallegos, does that mean that two
12 years, three years after a Division hearing order is
13 entered that somebody could come back and ask for a
14 Commission hearing? Is there any time limit?

15 MR. GALLEGOS: No, no. I think the time
16 limit is the 30 days. I think under Rule 423, I think
17 the time limit is 30 days. What I suggest and what the
18 rule would permit, you could file your application for
19 de novo in your entry of appearance, under section B of
20 4.10.

21 COMMISSIONER CATANACH: Anything else?

22 COMMISSIONER PADILLA: I just have a
23 clarification for you, Mr. Gallegos. You said that --
24 when you had the Division hearing and you're talking
25 about moving to the Commission hearing, the de novo is

1 not an appeal. But, in essence, it seems to me like
2 this is an appeal because Amtex is adversely affected by
3 what happened at the Division.

4 MR. GALLEGOS: I suppose in that sense Amtex
5 is, you could say, aggrieved. The Division really
6 didn't decide the issues that we are talking about
7 raising here.

8 COMMISSIONER PADILLA: Right.

9 MR. GALLEGOS: It just addressed what I
10 would say the routine presentation -- but it -- in terms
11 of procedure in the law, "appeal" connotes something
12 very different than "de novo."

13 COMMISSIONER PADILLA: Right.

14 MR. GALLEGOS: "Appeal" means we are going
15 to take a look at what the lower Court or what the
16 Division did and say whether it is right or wrong.

17 And the Oil and Gas Act, way back when,
18 decades ago, the Legislature, for whatever reason, said
19 that's not the system. The Commission gets to hear the
20 whole case from the very beginning no matter what the
21 Division did.

22 COMMISSIONER PADILLA: I guess we are
23 somewhat limited today because we are only discussing
24 the motion. And, for me, anyway, it would be
25 interesting to know why Amtex didn't participate. That

1 is just a commentary.

2 If Amtex is the aggrieved party, it would
3 seem that at the Division level something else could
4 have been done prior to coming to the Commission.

5 MR. GALLEGOS: Well, you know, I can't deny,
6 Commissioner Padilla -- I mean something could have been
7 done or the issues could have been presented to the
8 Division and the Division would have said we agree with
9 you or we don't agree with you. And, certainly, if our
10 issue about what we think of Rule 35, the risk penalty,
11 we know what the Division would have said.

12 COMMISSIONER PADILLA: Right.

13 MR. GALLEGOS: "We are not going to counter
14 that."

15 If they had said, "We are," Matador would be
16 here and say de novo.

17 COMMISSIONER PADILLA: Right.

18 MR. DeBRINE: If I could just respond to
19 your question, Commissioner Padilla.

20 I think you touched on a good point in that
21 the Commission's rules with regard to adjudicatory
22 hearings, they make exception where a party shows good
23 cause for not complying with the rules and showing up on
24 time. And that was never done by Amtex, and today they
25 offer no excuse.

1 So there is no basis for providing an excuse
2 22 days after the hearing is held for allowing them to
3 come in and pull the plug while the jury is still
4 deliberating. That's not something that is recognized
5 in the context of judicial proceedings. And it has
6 never been recognized in the context of Division
7 hearings.

8 And there's a difference between a party of
9 record and someone who the rules say is a party because
10 you have an interest in what's being asked for in the
11 application. You get notice because you're a party.
12 And the rules require that if you're asking the
13 Commission or Division to do something, you have to give
14 notice to specific persons.

15 But if you are going to become a party of
16 record, under the Commission's rules, you have to do
17 more than that. You have to show up. You have to enter
18 your appearance before the hearing or you have to show
19 up at the hearing and enter your appearance on the
20 record and participate at the hearing.

21 You touched on something else. These
22 decisions aren't just legal decisions. They have to be
23 made in context. The risk penalty, if it had been
24 objected to properly, that's going to be based on a
25 whole host of technical evidence as to what's the

1 appropriate penalty to apply. Maybe it's 200 percent,
2 maybe it's less.

3 The Hearing Examiner and Director can make
4 that call -- or the Commissioner can make that call when
5 those issues are presented.

6 Similarly, when you're deciding whether
7 you're going to grant a nonstandard spacing unit,
8 there's a whole host of individualized issues that can
9 come up. It's not just a perfunctory process.

10 And if nobody objects, the Division doesn't
11 look at the evidence and make a determination whether
12 waste will be prevented and whether correlative rights
13 will be impaired and, in fact, the Division order
14 specifically made findings on those issues, and that
15 there would be no impairment of correlative rights.

16 Amtex steps in claiming impairment 22 days
17 later. But to do that, you've got to offer evidence.
18 You've got to show up at the hearing. You didn't do
19 that. That's clearly the intent of the rules, and they
20 didn't do that. They're not a party of record, so they
21 shouldn't get to reshuffle the deck and look for a
22 different result with the Commission.

23 MR. GALLEGOS: Mr. Chairman, if it please
24 the Commission, it's real clear what counsel would like
25 the rules to be. But where in the rules does it say you

1 got to have an excuse for the time when you filed your
2 entry of appearance. It doesn't say that.

3 His rule is you've got to show up at the
4 hearing. It doesn't say that in the regulation. If the
5 Commission some day wants to have a hearing and adopt
6 counsel's idea of what the rules should be, it does it,
7 it can do that.

8 But what the law is, what the case law is --
9 I don't burden you with all that -- but what the case
10 law is Courts say -- and this was a particularly -- this
11 is one of the regulatory cases -- the Department is
12 required to act in accordance with its own regulations.

13 This happened to be the Water Quality
14 Commission. But that's what we are saying here. We are
15 just saying this Commission is required to act in
16 accordance with its own regulations and this is what the
17 regulations say.

18 We understand Matador would like for them to
19 say something or just assume it's something else. But
20 that's not what the regulations say.

21 We have complied with the regulations.
22 We're entitled to be a party, and this matter should go
23 forward to be heard on the issues that we raised on the
24 merits.

25 COMMISSIONER PADILLA: If I may,

1 Mr. Chairman. I just want to follow up on that,
2 Mr. Gallegos.

3 So is your argument, essentially, that Amtex
4 is a party of record because they are a person to whom
5 statute, rule, or order required notice, that kind of
6 thing?

7 MR. GALLEGOS: No. 1, yes, and, No. 2, they
8 entered an appearance, yes, Commissioner Padilla.

9 COMMISSIONER CATANACH: Are either counsel
10 aware of any precedent that's been set by this
11 Commission on this issue?

12 MR. GALLEGOS: I'm not, Mr. Chairman.

13 MR. DeBRINE: I'm not. And I consulted some
14 of the old hands and they weren't aware of any either.

15 COMMISSIONER CATANACH: And just for
16 clarification, on the Whiting, Pendragon, all those
17 parties were involved in the Division case and the de
18 novo case.

19 MR. GALLEGOS: That is true.

20 COMMISSIONER CATANACH: I wanted to clarify
21 that.

22 MR. GALLEGOS: That is absolutely true,
23 Chairman. I was just using that as an example of what
24 happens at the Division; it's kind of like Las Vegas,
25 what happens in the Division stays in the Division, and

1 then you start over at the Commission.

2 COMMISSIONER CATANACH: Are there any other
3 questions?

4 (No response.)

5 COMMISSIONER CATANACH: What is your
6 pleasure? Do you want to go into executive session?

7 COMMISSIONER BALCH: I do.

8 COMMISSIONER PADILLA: I second that.

9 COMMISSIONER CATANACH: Okay. All in favor
10 of that?

11 COMMISSIONER BALCH: Aye.

12 COMMISSIONER PADILLA: Aye.

13 COMMISSIONER CATANACH: Aye.

14 Folks, we'll go into executive session and
15 hopefully come up with an answer for you.

16 MR. DeBRINE: Thank you, Mr. Chairman.

17 MR. GALLEGOS: Thank you.

18 (Executive Session 10:00 a.m. to 10:40 a.m.)

19 COMMISSIONER CATANACH: Call the meeting
20 back to order. Could I have a motion to go back on the
21 record?

22 COMMISSIONER PADILLA: So moved.

23 COMMISSIONER BALCH: And seconded.

24 COMMISSIONER CATANACH: All in favor.

25 COMMISSIONER PADILLA: Aye.

1 COMMISSIONER BALCH. Aye.

2 COMMISSIONER CATANACH: Aye.

3 So we are back on the record in this case.

4 And just for the record, I would like to state that we
5 did, in an executive decision, only discuss the merits
6 of this application, of this motion.

7 And at this point, I will turn it over to
8 Mr. Brancard.

9 MR. BRANCARD: Okay, the Commission has
10 determined to deny -- sorry -- to grant the motion to
11 dismiss here on the grounds that entry of the appearance
12 was not timely.

13 The Commission's determination is on a
14 slightly different basis than that proposed by the
15 movement in this case. The key here is to determine who
16 are parties of record.

17 And it is the Commission's determination
18 that "at any time" means at any time while the record is
19 open in the proceeding.

20 So, normally, in that case it means up until
21 the end of the hearing in the matter that you can file
22 entry of appearance. And that was not done in this
23 case, so, therefore, the entry of appearance was
24 untimely and Amtex is not a party of record and
25 therefore not entitled to request a de novo application

1 before the Commission.

2 MR. DeBRINE: Thank you.

3 COMMISSIONER CATANACH: Can we get a draft
4 from you?

5 MR. DeBRINE: Sure. We've already prepared
6 an order for the Commission's consideration. We'll give
7 that to you right away.

8 COMMISSIONER CATANACH: I guess we would
9 dismiss the case then.

10 MR. BRANCARD: Yes.

11 COMMISSIONER CATANACH: So based on that
12 decision, Case No. 15366's De Novo Application by is
13 hereby dismissed.

14 MR. DeBRINE: Thank you, Mr. Chairman.

15 MR. GALLEGOS: Thank you.

16 COMMISSIONER CATANACH: Thank you.

17 MR. BRANCARD: So the only thing I wanted to
18 discuss -- this has nothing to do with you-all --
19 discuss with the Commission our pending litigation. We
20 may need to have an order clarifying the record in the
21 Lightning Dock/Geothermal matter.

22 I am still trying to get clear direction
23 from the District Court. We filed a record with the
24 District Court, but the issue with the District Court is
25 that there was one document in that proceeding that was

1 confidential. And the Court seems to be -- through a
2 voice-mail that went to a third party that was conveyed
3 to me -- indicating that unless we have an order about
4 the confidentiality of that document, the District Court
5 can't --

6 COMMISSIONER BALCH: Treat it as
7 confidential.

8 MR. BRANCARD: Treat it as confidential. So
9 I will need to find out more from the Court -- which I
10 haven't yet -- exactly what they want, if it is
11 something from the Commission or if they want us to
12 apply at the Court, how they want that to happen.

13 COMMISSIONER PADILLA: Okay.

14 COMMISSIONER CATANACH: So there's no action
15 to be done at the current time?

16 MR. BRANCARD: No.

17 COMMISSIONER CATANACH: But that's out there
18 and you will notify us. If they do require something in
19 the interim before our next meeting, is that something
20 we can do?

21 MR. BRANCARD: Well, the chair.

22 COMMISSIONER BALCH: I have no problem with
23 that at all.

24 COMMISSIONER CATANACH: So I can just sign
25 something --

1 COMMISSIONER PADILLA: The chair can sign it
2 for the Commission, that's fine with me.

3 COMMISSIONER BALCH: If we discussed at
4 length the reason and how it could be confidential --

5 MR. BRANCARD: It's in the transcript.

6 COMMISSIONER CATANACH: So there's no
7 disputing that it's confidential. So we will deal with
8 that when that comes up.

9 So anything else? If nothing else, this
10 Commission hearing is hereby adjourned.

11

12

13 (Time noted 10:45 a.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5
6

7 REPORTER'S CERTIFICATE
8

9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
10 No. 100, DO HEREBY CERTIFY that on Thursday, February
11 11, 2016, the proceedings in the above-captioned matter
12 were taken before me, that I did report in stenographic
13 shorthand the proceedings set forth herein, and the
14 foregoing pages are a true and correct transcription to
15 the best of my ability and control.
16

17 I FURTHER CERTIFY that I am neither employed by
18 nor related to nor contracted with (unless excepted by
19 the rules) any of the parties or attorneys in this case,
20 and that I have no interest whatsoever in the final
21 disposition of this case in any court.
22
23
24
25

ELLEN H. ALLANIC, CSR
NM Certified Court Reporter No. 100
License Expires: 12/31/16