

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

FINAL AGENDA AND DOCKET
NEW MEXICO OIL CONSERVATION COMMISSION MEETING

ORIGINAL

April 7, 2016
9:00 a.m.
Wendell Chino Building
Porter Hall
1220 S. St. Francis Drive
Santa Fe, New Mexico

CASE NO. 15443

APPLICATION OF THE NEW MEXICO OIL CONSERVATION TO AMEND
CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15, PART 36 OF
THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING SURFACE
WASTE MANAGEMENT FACILITIES, PART 35 OF THE NEW MEXICO
ADMINISTRATIVE CODE CONCERNING WASTE DISPOSAL, AND
PART 2 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING
THE DEFINITION OF OIL FIELD WASTE.

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2016 APR 11

BEFORE: DAVID R. CATANACH, Chair
Oil Conservation Division

ROBERT BALCH, Designee
Secretary of Energy and Minerals

PATRICK PADILLA, Designee
New Mexico Commissioner of Public Lands

A P P E A R A N C E S

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BILL BRANCARD, ESQ., Commission Attorney and
General Counsel for the Energy, Minerals
and Natural Resources Department

GABRIEL WADE, ESQ.
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
505.476.3216
gabriel.wade@state.nm.us

REPORTED BY: DEBRA ANN FRIETZE
PAUL BACA COURT REPORTERS
500 4th Street, NW, Suite 105
Albuquerque, New Mexico 87102

EXHIBITS 37-42 ADMITTED	16
REPORTER'S CERTIFICATE	33

1 THE CHAIR: Good morning. This is a
2 meeting of the New Mexico Oil Conservation Commission.

3 My name is David Catanach, Chairman of the
4 Commission. The time is approximately 9:00 a.m.
5 Today's date is April 7th, 2016.

6 This meeting is being conducted in Porter
7 Hall within the Wendell Chino State Building.

8 At this time I will take roll. Will the
9 Commissioners please introduce themselves for the
10 record?

11 COMMISSIONER PADILLA: Patrick Padilla,
12 Designee of the New Mexico Commissioner of Public Lands.

13 COMMISSIONER BALCH: I'm Dr. Robert Balch,
14 Designee of the Secretary of Energy and Minerals.

15 THE CHAIR: Also present, as always, is
16 Mr. Bill Brancard, the Commission Attorney and General
17 Counsel of the Energy, Minerals and Natural Resources
18 Department.

19 Commissioners, in your packet today, you
20 should have an agenda for today's meeting of the review
21 of the agenda.

22 Do I have a motion to adopt the agenda?

23 COMMISSIONER BALCH: I will move to adopt
24 the agenda.

25 COMMISSIONER PADILLA: I'd second that.

1 THE CHAIR: All in favor?

2 ALL MEMBERS: Aye.

3 THE CHAIR: The motion has passed. The
4 agenda is adopted.

5 Also in your packets you should find
6 minutes from the March 10th Commission Hearing. And
7 Commissioners, I would ask if you have any changes? And
8 if not, is there a motion and a second to adopt the
9 minutes?

10 COMMISSIONER PADILLA: No changes, and I
11 would move that we adopt those minutes.

12 COMMISSIONER BALCH: Second the motion.

13 THE CHAIR: All in favor?

14 ALL MEMBERS: Aye.

15 THE CHAIR: The motion to adopt the minutes
16 from the March 10th Commission Meeting is passed.

17 The next order of business is the
18 Consideration of Final Rule changes in Case Number
19 15443.

20 This case, which is the application of the
21 New Mexico Oil Conservation Division to amend certain
22 provisions of Rule Number 19.15.36 NMAC, also known as
23 the Surface Waste Management Rule, was heard by the
24 Commission on March 10th, 2016.

25 During that proceeding, the Commission made

1 certain language changes to the proposed rule. And I
2 believe at this time we have several exhibits that we
3 need to look at that will be submitted for today's
4 hearing I believe that show the changes made by the
5 Commission, as well as other exhibits that we need to
6 look at.

7
8 MR. BRANCARD: Yes. Mr. Chairman, at the
9 end of the meeting, I believe you -- or during the
10 hearing you requested several things from the Division,
11 who was the proponent of the rule change. One is
12 obviously final versions of the -- potential final
13 versions of the rule with the changes the Commission
14 made during the proceeding.

15 There were also requests for the Division
16 to look at certain language in there, such as the term
17 "operator," and see if there was a better way to phrase
18 that in there.

19 The Commission also wanted to look at a
20 form, which is referenced in the new rule, and what that
21 form might look like. And that is proposed Exhibit 39,
22 I believe.

23 So Exhibit 37 is Rule 36, and it's Proposed
24 Form --

25 THE CHAIR: I'm looking at the exhibit

1 book. And the first part of that exhibit book looks
2 like the rule, with color-coding in there with yellow
3 and blue. And that is --

4 MR. BRANCARD: Right. Blue is the deletion
5 of a term that's in the proposed -- that was in the
6 proposed rule, and yellow is the new term. Okay?

7 THE CHAIR: Okay.

8 MR. BRANCARD: Exhibit 38, I believe, is a
9 clean version of the rule with the changes made.

10 THE CHAIR: Okay. Exhibit 38 would be the
11 rule with everything -- all the changes already made?

12 MR. BRANCARD: Yes. So then Exhibit 39 is
13 the form.

14 Exhibit 40 is the Rule 35 proposed changes
15 number which the Commission did not adopt, and those are
16 highlighted in blue.

17 Exhibit 41 is a clean version. That would
18 be sent to the records center.

19 Then Exhibit 42, there was a lot of
20 discussion about this flowchart, about how applications
21 under Rule 36 would proceed, particularly with the
22 ability to revise an application and what happens after
23 that.

24 So the Division has attempted, in Exhibit
25 42, to revise their prior exhibits and give a more

1 accurate portrayal of what happens with the two reviews
2 that are contemplated under the new revised Rule 36.

3 THE CHAIR: So I guess I would ask the
4 Commission: What is the pleasure of the Commission?

5 Would you like to go through this
6 one-by-one and review the changes, or are you happy?
7 Are you satisfied that the changes were made and are
8 correct?

9 COMMISSIONER BALCH: We'll probably do it
10 exhibit-by-exhibit. We certainly don't need to check
11 every word change on operator and permittee. It looks
12 like that was word searched.

13 THE CHAIR: It looks like, for the most
14 part, that's quite a bit of the changes that were made,
15 just substituting permittee for operator or --

16 COMMISSIONER BALCH: In 37, that's the only
17 thing that's being shown. And with the proposed rule,
18 the owner has to be a permittee, which I think is the
19 spirit of the rule that we were looking for.

20 THE CHAIR: Right. And I think those
21 changes were made.

22 COMMISSIONER BALCH: Do you feel like
23 weighing in on that?

24 MR. WADE: Gabriel Wade on behalf of the
25 Oil Conservation Division.

1 Yes, we made the changes as requested by
2 the Commission. The only other additions that you might
3 see are for the financial assurance portions. There was
4 some language added.

5 COMMISSIONER PADILLA: You're referring to
6 the forms?

7 MR. WADE: Correct.

8 COMMISSIONER BALCH: For forms otherwise
9 acceptable?

10 COMMISSIONER PADILLA: Right. I think that
11 was where we spent a good amount of time, so it's nice
12 and clean.

13 THE CHAIR: Where is that, Mr. Wade?

14 MR. WADE: Oh, specifically?

15 COMMISSIONER PADILLA: Page 8 of Exhibit
16 39. I'm sorry, 37.

17 COMMISSIONER BALCH: And there's two or
18 three places where that shows up.

19 COMMISSIONER PADILLA: Right.

20 MR. WADE: You'll see some in 36.11 as
21 well, that same exact language. And I think the other
22 big change was the deletion of monitoring postclosure in
23 36.20. We did delete that. You'll see that in blue.

24 COMMISSIONER BALCH: In 19.15.36.13(I), are
25 you sure there's not a missing word replacement? It's

1 on page 11, right there. It looks like there was a
2 deletion, but nothing put in its place.

3 MR. WADE: You're correct. The blue, I
4 think, was meant to go to application. So it should
5 read, "Upon application, the Division."

6 COMMISSIONER BALCH: Okay. That would make
7 a lot more sense.

8 THE CHAIR: So just add the word
9 "application," undelete it?

10 MR. WADE: Un -- yeah, unhighlight it.
11 Which, maybe if we look at Exhibit 38, we'll see if that
12 change was done correctly on a clean copy.

13 In Exhibit 38, it does read, "Upon
14 application comma."

15 COMMISSIONER BALCH: Okay.

16 COMMISSIONER PADILLA: Nothing else jumps
17 out at me.

18 COMMISSIONER BALCH: That wasn't even
19 really a correction because it was just a typo in the
20 exhibit.

21 MR. WADE: The only real change would have
22 been the deletion, and it just didn't read correctly
23 with the change to applicant or permittee. So what we
24 did, from the rule as it exists right now, we did delete
25 that "upon," and then we deleted, "the operator."

1 It doesn't even read correctly in this
2 version, so I'm not quite sure what the rule says. So
3 we just tried to make it read correctly within the
4 sentence because we had to add applicant or permittees.

5 COMMISSIONER BALCH: Do we want to move on
6 the exhibit separately or just do it all at once at the
7 end?

8 THE CHAIR: I think we can do it
9 separately. I think we'll be okay.

10 So with regard to Exhibit Number 38, do I
11 hear a motion to adopt 38 as shown on --

12 COMMISSIONER PADILLA: Do you want to start
13 with 37?

14 THE CHAIR: Well, 37 --

15 COMMISSIONER BALCH: 37 just shows the --

16 THE CHAIR: -- just shows the changes, so I
17 don't think we need to --

18 COMMISSIONER PADILLA: We don't need to do
19 anything with that one?

20 THE CHAIR: -- approve that document or
21 that exhibit.

22 Mr. Brancard.

23 MR. BRANCARD: Yeah, 38 would be the
24 version that would be filed.

25 MR. WADE: Correct.

1 COMMISSIONER BALCH: Maybe we need to wait
2 on that until the very end.

3 THE CHAIR: On 38?

4 COMMISSIONER BALCH: Yes.

5 THE CHAIR: So you want to go ahead and
6 review the other parts, the other forms and such, first?

7 COMMISSIONER PADILLA: 39 was what everyone
8 seemed to want to see prior to the adoption of C-137.

9 THE CHAIR: And again, Mr. Wade, this was
10 just a form for minor mods, modifications, to the
11 Department?

12 MR. WADE: That's correct, and we tracked
13 the language of the rule. We made some deletions. For
14 example, we deleted "safety" from that sentence, "health
15 and safety."

16 We just tried to make it to where people
17 can fill out this form. It's essentially a
18 registration, and there's not a lot of requirements in
19 the form like there would be a with major modification.

20 COMMISSIONER BALCH: And just to be clear,
21 the removal of the word "safety" was to make the
22 phrasing similar to other rules?

23 MR. WADE: The statutory language and other
24 rules.

25 COMMISSIONER BALCH: Not that we're not

1 concerned about safety.

2 THE CHAIR: Because we are.

3 COMMISSIONER BALCH: It's my understanding,
4 Chair Catanach, that these forms, they're really for the
5 convenience of the Division, and this does not have to
6 be directly approved by us. It's really just for
7 information.

8 THE CHAIR: You know, just looking through
9 the form, I don't see that there's any concern -- I
10 don't have any concerns about the form anyway, so I
11 don't even -- you know, again, I don't think the
12 Commission has to adopt the form.

13 Do you have any comments on the form,
14 Mr. Padilla?

15 COMMISSIONER PADILLA: No. I think we were
16 just interested in seeing what a proposal might look
17 like that is pretty high level as far as not getting
18 into the weeds on what your requirements are. So I
19 think that's beneficial.

20 THE CHAIR: So Mr. Brancard, we wouldn't
21 necessarily have to adopt the form --

22 MR. BRANCARD: No.

23 THE CHAIR: Okay. I just wanted to make
24 sure you --

25 MR. BRANCARD: You've done this in several

1 rule makings now where the rule says, you know, apply by
2 filing this form. And you say, "Well, what does the
3 form look like?"

4 THE CHAIR: Okay.

5 COMMISSIONER BALCH: But we don't want to
6 adopt the form because then they can't change it without
7 us looking at it again.

8 MR. BRANCARD: Exactly.

9 THE CHAIR: Good point.

10 So we move on then to 40. Minor changes to
11 that rule, and that was just for clarification to
12 coincide with 36, right?

13 MR. WADE: In Exhibit 40, that's Rule 35,
14 it shows the deletions are the parts of the proposed --
15 OCD's proposed rule change that the Commission did not
16 adopt. Those are in blue. And then there's a very
17 minor yellow, where there was just one typo error.
18 You'll see that on page 2. Otherwise, the rule is
19 exactly as it was.

20 You know, I apologize. I think one thing
21 that did not get highlighted on here is the Commission
22 did adopt putting "oil field" before "waste" throughout
23 the rule. And that is shown -- they are underlined on
24 this exhibit, but they are not highlighted in yellow.

25 MR. BRANCARD: Well, they're not changed

1 from your original proposal?

2 MR. WADE: Correct.

3 MR. BRANCARD: So whatever is underlined
4 was part of -- or strike-thru was part of the original
5 rule-making proposal.

6 MR. WADE: Which was adopted or considered.

7 THE CHAIR: Messrs., do you have any
8 concerns or questions about that exhibit?

9 COMMISSIONER PADILLA: I do not.

10 COMMISSIONER BALCH: Neither do I.

11 THE CHAIR: Okay. Do I have a motion to
12 adopt -- approve Exhibit Number 40?

13 COMMISSIONER PADILLA: So moved.

14 COMMISSIONER BALCH: And seconded.

15 THE CHAIR: All in favor?

16 ALL MEMBERS: Aye.

17 MR. WADE: It would really be 41.

18 THE CHAIR: 41. I just realized that. So
19 41 is a clean copy of that rule, so we'll adopt Exhibit
20 41.

21 COMMISSIONER BALCH: Sure.

22 THE CHAIR: Again, all in favor?

23 ALL MEMBERS: Aye.

24 THE CHAIR: Just remove that. Or does the
25 previous motion --

1 COMMISSIONER BALCH: I think we're going to
2 move here in a minute if you're going to adopt or not
3 about the entire rule. So it should be taken care of.

4 THE CHAIR: So then Exhibit Number 42
5 was -- as I recall, this is not going to be included in
6 any document that we -- any public document or the rule.
7 Is that my understanding?

8 MR. WADE: It will not be included in the
9 rule itself. It would be, of course, up to the Director
10 if he should put this up for some kind of guidance on
11 the website.

12 But you did ask that it be clarified, and
13 we did work on it to hopefully show all the permeations
14 in the application process.

15 COMMISSIONER BALCH: I think if I was an
16 applicant, this would be helpful.

17 COMMISSIONER PADILLA: Right. It would be
18 great to include as part of the applicant package.

19 THE CHAIR: Again, we may just put this out
20 on the website as guidance where we're trying to get
21 together a lot of guidance and training documents, so it
22 would probably be a good place to do that. So we
23 wouldn't have to adopt this, either.

24 MR. WADE: Before I forget, I would ask
25 that Exhibits 37 through 42 be entered into the record.

1 THE CHAIR: Exhibits Number 37 through 42
2 will be admitted.

3 [Exhibits 37 through 42 admitted.]

4 THE CHAIR: Did you guys have any questions
5 or concerns about the diagram?

6 COMMISSIONER BALCH: I looked at it. It
7 makes sense.

8 COMMISSIONER PADILLA: No. It's got a few
9 more possible routes that we addressed the last time.

10 COMMISSIONER BALCH: The main concern I had
11 before was it had an infinite loop.

12 COMMISSIONER PADILLA: Right, and we don't
13 want that.

14 THE CHAIR: So I guess do we need to --

15 COMMISSIONER BALCH: I would make a motion
16 to adopt the Surface Waste Rule as modified in Exhibits
17 37 through 42.

18 COMMISSIONER PADILLA: I'd second that.

19 THE CHAIR: Okay. All in favor?

20 ALL MEMBERS: Aye.

21 MR. WADE: Just a minor clarification.

22 MR. BRANCARD: Yeah. Wasn't there another
23 rule change?

24 MR. WADE: 35 is waste disposal.

25 MR. BRANCARD: But did you also change

1 definitions?

2 MR. WADE: We did change definitions. I
3 did not include that as part of these exhibits because
4 as they were proposed under Exhibit --

5 MR. BRANCARD: So your original Exhibit --

6 MR. WADE: -- 2.

7 MR. BRANCARD: -- 2 is a definition change
8 to the definition of oil field waste, which there were
9 no further changes by the Commission to that definition.

10 THE CHAIR: Is that in 35?

11 MR. BRANCARD: No, Rule 2.

12 MR. WADE: 2.7. It's your -- if you have
13 your binder from the original hearing, it's Exhibit 2.
14 I can bring up my binder if the Commission would like to
15 look at it.

16 THE CHAIR: If you can just reference the
17 rule number.

18 MR. WADE: It's in the Definitions. It's
19 19.15.27(o), the definition of oil field waste.

20 COMMISSIONER BALCH: It's right here.

21 THE CHAIR: So we amended that rule. We're
22 amending Rules 36 and 35?

23 MR. WADE: Correct.

24 THE CHAIR: And is that a summary of
25 everything we're amending here? Did we have any

1 concerns with the rule change on the definition?

2 MR. WADE: Not based on past deliberations.

3 COMMISSIONER BALCH: So we have a second
4 motion then to adopt the definition change in 19.15.2.7.

5 COMMISSIONER PADILLA: I would move that we
6 do so.

7 THE CHAIR: All in favor?

8 ALL MEMBERS: Aye.

9 THE CHAIR: So did we in fact do a vote on
10 Rule 35, as well, because I guess that's included in the
11 package. So we did vote on that?

12 COMMISSIONER BALCH: I think we just did
13 that on the previous one.

14 THE CHAIR: Okay. So I think that takes
15 care of the three rule changes we have on board today.

16 COMMISSIONER BALCH: Hang on just a second.
17 Are you tracking us, Bill?

18 MR. BRANCARD: Yes. So it's Rule 36 as
19 shown in Exhibit 38, Rule 35 as it's shown on Exhibit
20 41, and then Rule 2 as shown in Exhibit 2 from the
21 original hearing.

22 THE CHAIR: Okay.

23 COMMISSIONER BALCH: We did adopt the
24 changes in Exhibits 37 through 42.

25 THE CHAIR: Now, that being taken care of,

1 we don't have a draft order in this case, which I need
2 to talk to the Commission about that.

3 I guess what we can do is after the hearing
4 at some point is have an order drafted for this rule
5 change. And if the Commission wants to wait until the
6 next hearing before we sign the actual order, or do you
7 want to give me the authority to do that? I don't know.

8 Do you have any comments on that,
9 Mr. Brancard?

10 MR. BRANCARD: It's up to the Commission.

11 COMMISSIONER PADILLA: I'm fine to give the
12 Chairman the authority to sign this.

13 COMMISSIONER BALCH: Is this a pressing
14 matter, Mr. Wade?

15 MR. WADE: It depends on who is drafting
16 the order. I don't know that it's pressing.

17 COMMISSIONER BALCH: But it will take some
18 time to --

19 MR. WADE: Yes.

20 COMMISSIONER BALCH: Maybe we'll just deal
21 with it at the next hearing, which is the 19th of May?

22 THE CHAIR: May 19th, yeah. That's fine.
23 Do you want to draft that order?

24 MR. BRANCARD: I'll work with Mr. Wade
25 drafting that.

1 THE CHAIR: Okay.

2 COMMISSIONER PADILLA: I do have one last
3 question for you, Mr. Wade, before you go. A lot of --
4 I'm just curious. A lot of the testimony related to the
5 two halves of this rule making for 36. Do you have any
6 idea when you might be bringing the technical portion of
7 that to us?

8 MR. WADE: That would not be something that
9 I would have control over. I ask the Director of the
10 OCD.

11 COMMISSIONER BALCH: So following up on
12 Commissioner Padilla's question there, I think that
13 there was some indication that the parties involved in
14 drafting that technical part of the rule were at an
15 impasse.

16 MR. WADE: I believe so.

17 COMMISSIONER BALCH: Would there be value
18 in trying to bring some of those questions to the
19 Commission for resolution?

20 MR. WADE: Prior to a proposed rule?

21 COMMISSIONER BALCH: Yeah.

22 MR. WADE: I believe that's been done in
23 the past. I can see value in that.

24 COMMISSIONER BALCH: I mean if you're
25 stuck, you're never going to get to the point where you

1 bring a full draft rule to us.

2 MR. WADE: I think that if the Commission
3 were to give guidance, then that would help work --

4 COMMISSIONER BALCH: We can do that. We've
5 done it before, right?

6 MR. BRANCARD: Well, these are your rules.
7 So if you want to give direction and say, "We'd like a
8 rule that says X, Y; please write it up for us," I think
9 you can do that.

10 It would still go through the whole process
11 of the hearing and the notice, and you will have a
12 chance to review it and comment on it.

13 COMMISSIONER BALCH: So the point would be
14 that the sticking points between the parties could then
15 be discussed in a formal setting with our guidance?

16 MR. WADE: I believe something like that
17 occurred in a previous rule-making -- it might have been
18 Rule 17. I'm not sure.

19 THE CHAIR: Mr. Wade, I'm not aware that
20 there was an impasse between the parties. I thought
21 that there was going to be some disagreement, but I
22 didn't know that there was an impasse.

23 MR. WADE: In the previous work group,
24 there was such disagreement that the work was
25 essentially dissolved, or at least it was put on hold

1 indefinitely, I think.

2 COMMISSIONER BALCH: I mean it wouldn't
3 even necessarily be untoward for us to look at two
4 competing versions.

5 MR. WADE: That's correct.

6 COMMISSIONER PADILLA: I think it's, you
7 know, in the interest of regulatory certainty, which
8 seemed to come up several times in the last hearing, by
9 amending part of the rule and not the rest, we're
10 leaving some people in a little bit of a limbo as to
11 which way to move.

12 COMMISSIONER BALCH: In fact, we had to
13 strike the entire section --

14 COMMISSIONER PADILLA: Right.

15 COMMISSIONER BALCH: -- from the proposed
16 rule because we needed to have the technical portion
17 understood before we changed the operating parameters
18 for existing permits under a different permitting
19 system.

20 MR. WADE: The reason we brought these
21 particular proposed amendments up is because we knew
22 that they weren't controversial and they would help the
23 application process.

24 So yeah, I think that having guidance for
25 the rest of the rule would be helpful.

1 THE CHAIR: And just for the Commission's
2 knowledge, we are in fact thinking about doing another
3 rule change within the environmental group to help
4 define "delineation spill" and "leak delineation
5 standards" and "cleanup standards." And that's going to
6 be another one that's going to be a pretty major task,
7 so we may have to prioritize those two and see which
8 ones we want done first.

9 So we'll have to do some talking about that
10 within the Division and see how we want to handle that.
11 But I wouldn't have any objection to them bringing
12 stuff -- I mean information to us to settle if they
13 can't reach an agreement.

14 That spill-and-leak thing just came up
15 within the last week or so. So you know that may be a
16 bigger issue than the surface waste management. I'm not
17 sure at this point.

18 MR. WADE: For the Commission's benefit,
19 keep in mind that there's been, I believe, one permitted
20 facility under Rule 36. There might be two; I can't
21 remember. So it's not as if there's a lot of
22 applications.

23 There are some pending applications, but
24 it's not something that's a hot-button issue, I don't
25 think.

1 THE CHAIR: According to Mr. Griswold, I
2 think there's three pending applications right now, new
3 applications. But we still have to deal with the
4 existing legacy --

5 COMMISSIONER PADILLA: Right. And I think
6 a lot of it relates to the transitional period and the
7 interpretation by some areas in the Division as to how
8 those rules are applied.

9 COMMISSIONER BALCH: Yeah. There was
10 extensive public comment in the March hearing about how
11 certain sections of the proposed rule changes that we
12 made today would change the operating practice for
13 existing departments not under 36. Maybe they do need
14 to be brought into that umbrella. But before we felt
15 comfortable doing that, we wanted to have the technical
16 parts of the new rule fleshed out.

17 So I don't know if that's something that in
18 some near future Commission hearing it might be brought
19 forward. It doesn't have to be a formal request; it can
20 just be information. And then a little guidance from us
21 may help get past any places that are causing conflict.

22 THE CHAIR: So I guess I'd ask you,
23 Mr. Wade: Is this basically going to be your last
24 change before the Commission? I know you're moving to a
25 different division or have moved.

1 MR. WADE: I don't know that this will be
2 my last. I don't know -- I am moving over to the Mining
3 and Minerals Division of EMNRD. But I'd be open to
4 still helping out with certain OCD issues, maybe not the
5 rest of Rule 36.

6 THE CHAIR: Okay. So I guess if you could
7 get the draft order finished, and maybe, if possible,
8 circulate that to us prior to the hearing so we can
9 review that?

10 COMMISSIONER BALCH: Yes, we'll do that.

11 THE CHAIR: I know at this point the May
12 Commission docket looks to be pretty bad. I think
13 there's at least three contested cases on that docket,
14 so I don't know how it's going to turn out. So we may
15 want to get some of this done ahead of time.

16 MR. WADE: Did the Commission decide that
17 the Chair can be the signatory then or --

18 THE CHAIR: No. I think we're going to,
19 for this case, wait until the next Commission hearing,
20 and then all three of us would sign it.

21 COMMISSIONER BALCH: It gives you three
22 weeks to prepare the order and wait for us to review it.

23 MR. BRANCARD: Put that at the beginning of
24 the agenda the next time. It should be pretty quick.

25 THE CHAIR: Okay.

1 Anything else on this matter at this time?

2 COMMISSIONER PADILLA: No.

3 COMMISSIONER BALCH: No.

4 THE CHAIR: Okay. Thank you, Mr. Wade.

5 MR. WADE: Thank you.

6 THE CHAIR: The next order of business on
7 today's docket is a motion for rehearing filed by Amtex
8 Energy, Inc., in Case Number 15366, which was the
9 application of Matador Production Company for a
10 non-standard spacing and proration unit, compulsory
11 pooling and non-standard location in Lea County.

12 Commissioners, just for your recollection,
13 Case Number 15366 was originally heard by the Division
14 on September 3rd, 2015. Subsequent to the hearing, the
15 Division issued Order Number R14097 to Amtex Energy,
16 Inc., a pooled party to that case, then filed for a
17 de novo hearing.

18 The matter was placed on the Commission
19 docket. And subsequent to that, Matador filed a motion
20 to dismiss, which was heard by the Commission on March
21 10th. The Commission granted Matador's request.

22 And at this point, Amtex Energy has now
23 filed a motion for the Commission to rehear the case.

24 Is that correct, Mr. Brancard?

25 MR. BRANCARD: Yes. A request for

1 rehearing is allowed under the statute. And it's also,
2 if you're going to appeal a Commission's adjudicatory
3 decision, it's a prerequisite to the appeal to file a
4 request for rehearing.

5 The statute provides that the Commission is
6 given ten days to decide on a rehearing motion. And if
7 the Commission doesn't act, it's deemed a denial of the
8 motion.

9 You know, we've had a few of these in the
10 past, and they tend to sort of land in between
11 Commission meetings. And unless the Commissioners want
12 to have a special meeting, the Commission simply doesn't
13 act on it.

14 This one happened to land within the
15 timeframe they we're having a meeting, so I put it on
16 the agenda for the Commission. It landed in there
17 because of a -- sort of an interesting separate statute
18 that we don't have, which provides that when you
19 interpret a statute and it has a timeframe of less than
20 eleven days, you don't include weekends.

21 So while this normally would have ended on
22 Monday because it flowed over two weekends, the 10-day
23 period, we're still within the 10-day period, even
24 though -- that's why it was filed like 14 days ago. So
25 that's why we're here.

1 So you're within the timeframe to make a
2 decision. You can grant the rehearing request that's in
3 the motion, you can deny it, or you can do nothing,
4 which means you have denied it. So those are your three
5 options here.

6 I believe Ms. Davidson sent all of you a
7 copy of the motion, which is fairly concise.

8 THE CHAIR: So just for clarification,
9 Mr. Brancard, if we were to approve their motion, that
10 would mean that the Matador rehearing would be again
11 placed on the Commission docket for rehearing?

12 MR. BRANCARD: That's right.

13 THE CHAIR: And if we do not approve the
14 motion, then it would just -- the Matador case would
15 just go away, as it is now?

16 MR. BRANCARD: Right. And that triggers an
17 appeal period under the statute.

18 COMMISSIONER BALCH: Then they can appeal
19 it to the Appeals Court. I mean I think that -- reading
20 their application, really what this came down to for us
21 was a party of record.

22 I hadn't seen anything that changed the way
23 I thought about them being a party of record. Maybe
24 that does have to be defined by someone above us.

25 COMMISSIONER PADILLA: I would agree with

1 you on that. I think that's somewhat of a slippery
2 slope to set that precedent that you can become a party
3 of record after a decision has been made.

4 COMMISSIONER BALCH: Well, after the 10-day
5 grace period of the decision being made?

6 COMMISSIONER PADILLA: Right.

7 THE CHAIR: Yeah. And looking at their
8 motion for rehearing, I did not see anything that would
9 change my mind ultimately, so I would probably not grant
10 the request.

11 MR. BRANCARD: Just to clarify, while
12 Mr. Gallegos argued at the hearing that you could become
13 a party of record after a decision was rendered, in this
14 case they actually filed their request to be a party of
15 record before the -- after the hearing was held, but
16 before the decision was made.

17 COMMISSIONER PADILLA: Right.

18 COMMISSIONER BALCH: Right. We concluded,
19 I think, individually and as a group, that that meant
20 they were not a party of record --

21 COMMISSIONER PADILLA: Right.

22 COMMISSIONER BALCH: -- and that was our
23 interpretation, if I recall correctly.

24 THE CHAIR: That is correct. And I don't
25 see anything that has changed my mind since that time.

1 COMMISSIONER PADILLA: Nor do I.

2 COMMISSIONER BALCH: So we can either vote
3 to deny it, or we can just do nothing and it would be
4 denied?

5 MR. BRANCARD: Exactly.

6 COMMISSIONER PADILLA: Well, we're all
7 here. We might as well vote.

8 THE CHAIR: We're all here, and I would
9 say: Do I have a motion to vote on this?

10 COMMISSIONER PADILLA: So moved.

11 THE CHAIR: Do I have a motion to deny this
12 request?

13 COMMISSIONER PADILLA: So moved again.

14 COMMISSIONER BALCH: And I would second the
15 motion to deny the request.

16 THE CHAIR: Okay. All in favor?

17 ALL MEMBERS: Aye.

18 THE CHAIR: So the Amtex Energy request for
19 a rehearing is hereby denied by the Commission.

20 MR. BRANCARD: I will draft a one-sentence
21 order with the Commission Chair. So the Commission
22 considered at the hearing today and voted to deny.

23 THE CHAIR: And would that be sufficient
24 just for my signature?

25 MR. BRANCARD: Yes, I would hope so.

1 COMMISSIONER BALCH: I would make a motion
2 that we can have the Chair sign in in our stead.

3 COMMISSIONER PADILLA: Second.

4 THE CHAIR: All in favor?

5 ALL MEMBERS: Aye.

6 THE CHAIR: That takes care of that.

7 The next order of business on the docket, I
8 believe Mr. Brancard was going to give the Commission a
9 briefing on pending litigation that may involve the
10 Commission.

11 Do you want to do that in Executive
12 Session, or we can do it on the record.

13 COMMISSIONER BALCH: The only people here
14 is the record.

15 MR. BRANCARD: I guess I suggest you go
16 into Executive Session. Since there are no other
17 matters on the agenda, the court reporter doesn't have
18 to stick around.

19 First you need to do a motion to go into
20 Executive Session to consider pending litigation
21 involving the Commission.

22 COMMISSIONER BALCH: I will move that we go
23 into Executive Session to discuss pending litigation.

24 COMMISSIONER PADILLA: I'll second that.

25 THE CHAIR: All in favor?

1 ALL MEMBERS: Aye.

2 COMMISSIONER PADILLA: Sorry. Do we then
3 need to come out of Executive to adjourn the meeting?

4 [The proceedings adjourned at 9:45 a.m.]

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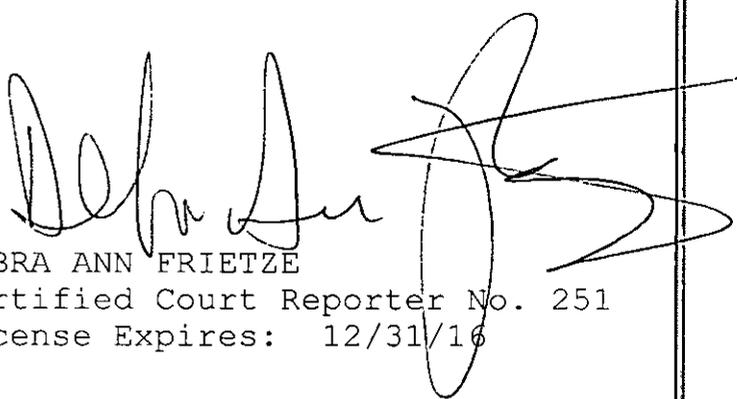
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1 STATE OF NEW MEXICO.
2 COUNTY OF BERNALILLO

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8 REPORTER'S CERTIFICATE

9
10 I, DEBRA ANN FRIETZE, New Mexico Certified Court
11 Reporter No. 251, do hereby certify that I reported the
12 foregoing proceeding in stenographic shorthand and that
13 the foregoing pages are a true and correct transcript of
14 those proceedings and was reduced to printed form under
15 my direct supervision.

16 I FURTHER CERTIFY that I am neither employed by nor
17 related to any of the parties or attorneys in this case
18 and that I have no interest in the final disposition of
19 this case.
20

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23 Certified Court Reporter No. 251
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