

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

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

CASE NO. 13589

2006 MAR 3 PM 3 21

**APPLICATION OF DUKE ENERGY FIELD
SERVICES, LP FOR AN ACID GAS INJECTION
WELL, LEA COUNTY, NEW MEXICO.**

RESPONSE TO MOTION TO DISMISS

Duke Energy Field Services, LP (“DEFS”) hereby Responds to the Motion to Dismiss filed by Randall Smith, Beach Snyder and A. C. Ranches (“Opponents”) in the above-referenced case.

I. DEFS HAS AUTHORITY TO UTILIZE THE SUBJECT LANDS

The Opponents first ground for dismissal is that “Duke Energy presently has no right by permit, lease or otherwise to utilize either the surface or subsurface of the State of New Mexico Trust lands upon which it proposes to locate its pipeline, compression facility and injection well.”

Attached hereto as Exhibit A is a copy of State of New Mexico Oil and Gas Lease No. VO 7530-1 whereby DEFS has acquired the oil and gas lease under the lands upon which the proposed injection well and related facilities will be located. Attached as Exhibit B is a copy of the Grant of Right-of-Way from the Commissioner of Public Lands dated February 8, 2006, covering the surface for the proposed Linam Injection well and related facilities. DEFS has the right by lease and grant of right-of way to use the State of New Mexico Trust lands upon which it proposes to locate its pipeline, compression facility and injection well. Opponents first “compelling” reason for dismissal is in error and its Motion to Dismiss should be denied.

II. OPPONENTS HAD ADEQUATE NOTICE

Opponents also raise notice objections. They observe that this application has been brought under the Division rules that apply to Class II wells under the Division’s delegated responsibilities pursuant to the Safe Drinking Water Act. This statement is correct. This is an application for approval of a Class II injection well and all notice requirements for this application have been met. Notice was provided by sending the application by certified mail to all leasehold operators within one-half mile of the

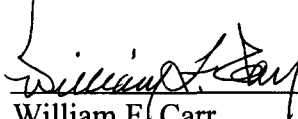
proposed injection well and to the owner of the surface of the land on which the well will be drilled. Notice was also published in the *Hobbs Sun* as requires by Division Rules. See NMAC 19.15.9.701 (2005). By letter dated September 16, 2005, the Division also recommended that Duke notify all operators within one-mile of the proposed facility, the surface owner, the surface lessee and the City of Hobbs.

Opponents call for broader notice by Duke Energy Field Services and complain that they cannot confirm if others have been properly notified. Opponents admit that DEFS met the notice requirements prescribed in Rule 701 and cannot show that DEFS did not meet the additional requirements in the September 16 letter. Opponents are complaining that there should be more notice in this case. However, the notice provided by Duke was sufficient to reach the Opponents and they have appeared in this case and are fully participating in the hearing process. See *Maso v. N.M. Tax. and Rev. Dept.*, 135 N.M. 152, 85 P. 3d 276 (N.M. Ct. App. 2004)(Finding that notice given should be reasonably calculated to inform interested parties of pendency of action and afford an opportunity to present objections). By appearing and participating, the opponents have waived their objection. While they would like to change the nature of this proceeding and expand the required notice to bring others into the process, that is a decision for the Division, not the opponents to this application.

Respectfully submitted,

HOLLAND & HART, LLP

By:


William F. Carr

110 North Guadalupe, Suite 1
Post Office Box 2208 (87504-2208)
Santa Fe, New Mexico 87501
(505) 988-4421
(505) 983-6043 facsimile

**ATTORNEYS FOR DUKE ENERGY FIELD
SERVICES, LP**

CERTIFICATE OF SERVICE

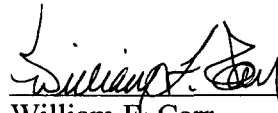
I certify that on March 3, 2006 I served a copy of the foregoing document to the following by

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Fax
- ☐ Electronic Service by LexisNexis File & Serve

J. Scott Hall, Esq.
Miller Stratvert P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986

Cheryl O' Connor, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504

David Brooks, Esq.
New Mexico Oil Conservation Commission
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504



William F. Carr

NEW MEXICO STATE LAND OFFICE
ASSIGNMENT OF OIL AND GAS LEASE
 ONLINE Version

RECEIVED

2005 AUG 20 AM 7 39

From Lease Number
 V0-7530-0
 To Lease Number
 V0-7530-1

FOR VALUE RECEIVED, GEOLEX, INC.

Assignor Name (include name of spouse, if any; or type of business entity)

STATE LAND OFFICE, OGRID No. 235647
 SANTA FE, N.M.

("Assignor" whether one or more), assigns and conveys to: DUKE ENERGY FIELD SERVICES, LP, OGRID No. 36785

Assignee

("Assignee" whether one or more), whose mailing address is 370 17TH STREET, SUITE 2500, DENVER COLORADO ZIP 80202the entire interest and title in and to Oil and Gas Lease No. V-7530 0000 ("the Lease") initially made by the New Mexico State Land Office to:GEOLEX, INC., Dated AUGUST 1, 2005, insofar as the Lease covers the following land in LEA County, New Mexico:

ORIGINAL LESSEE

Township Range Section Description:

<u>18S</u>	<u>37E</u>	<u>30</u>	<u>LOT(S) 3 (39.87), 4 (39.85), E2 SW4</u>	<u>159.72 ACRES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

together with the rights incident thereto, and improvements thereon, if any.

Assignee assumes and agrees to perform all duties and obligations to the Commissioner of Public Lands including payment of rentals and royalties, and to do such other acts as are required by the Lease, to the same extent and in the same manner as if the provisions of the Lease were fully set out herein.

Assignor warrants the leasehold estate herein assigned, except as to any valid overriding royalty, production payment, operating agreement or sub-lease, if any, now of legal record, and covenants to the Assignee and the Commissioner of Public Lands that the leasehold estate assigned is valid, and that all rentals and royalties due under the Lease have been paid in full, and that all other Lease obligations presently due have been fully performed.

EXECUTED this 15TH day of AUGUST, 2005.By: [Signature] AssignorPRESIDENT, GEOLEX, INC.

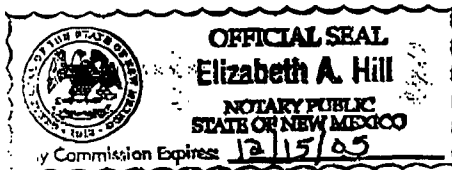
Spouse, if any, OR Title, if signing in representative capacity

ACKNOWLEDGMENT

STATE OF New Mexico)
 COUNTY OF Bernalillo) ss

This Assignment was acknowledged before me this 15th day of August, 2005.by Alberto A. Gutierrez, President, Geolex, Inc.

Title, if signing in representative capacity



[Signature] Notary Public
 My commission expires 12/15/05

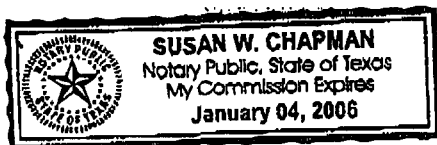
ASSIGNEE'S ACCEPTANCE

The undersigned Assignee named above hereby agrees to be bound by all of the terms, covenants, and conditions of the Lease and this Assignment and shall succeed to the rights and benefits under the Lease.

EXECUTED this 22nd day of August, 2005.By: [Signature] Assignee

Managing Director of Operations
 Title, if signing in representative capacity

ACKNOWLEDGMENT

STATE OF TexasCOUNTY OF Midland) ssThis Assignee's Acceptance was acknowledged before me this 22nd day of August, 2005By Dennis J. DeanManaging Director, Operations
Title, if signing in representative capacity
Susan W. Chapman
 Notary Public
 My commission expires Jan. 4, 2006

APPROVAL OF THE COMMISSIONER

Office of the Commissioner of Public Lands
Santa Fe, New MexicoI hereby certify that this Assignment was filed in my office on AUG 29 2005 and was approved by meand shall be effective as to the State of New Mexico on SEP 15 2005
Patricia H. [Signature]
 COMMISSIONER OF PUBLIC LANDS

INSTRUCTIONS AND INFORMATION

1. **ANNUAL RENTAL:** The annual rental for the land in this Assignment is \$1.00 per acre. The rental is due in advance and shall be paid to the Commissioner of Public Lands on the anniversary date of the original Lease agreement. The date of this Assignment does not change the annual rental due date. For any Assignment of any Lease initially issued prior to June 15, 1985, the annual rental shall not be less than six dollars (\$6.00). For any Assignment of any Lease initially issued after June 14, 1985, or of any Lease which has been stipulated to the new ten year Lease, the minimum rental is forty dollars (\$40.00).
2. **FIXED TEN-YEAR LEASE:** This Lease provides for a fixed ten-year term, and for so long as oil or gas is produced in paying quantities. The ten-year period is divided into a primary term of five years, followed by a secondary term of five years. If no production is had during the primary term, the rental for the secondary term is double the rental of the primary term, or equal to the highest prevailing rental rate in the district, whichever is higher. Rentals continue even though production is had.
3. **FIXED FIVE-YEAR LEASE:** This Lease provides for a fixed five-year term, and for so long as oil and gas is produced in paying quantities. The fixed five-year Lease has no secondary term. Rentals continue even though production is had.
4. **FILING:** All Assignments must be filed in the State Land Office in triplicate, with original signatures on all three copies, within one hundred days from the date of signing, and must be accompanied by the recording fee.
5. **RECORDING FEE:** The recording fee for each Assignment is thirty dollars (\$30.00). If, however, the Assignment is filed more than one hundred days from the date of signing, an additional fee of seventy-five dollars (\$75.00) is charged.
6. **PERSONAL CHECKS:** When an Assignment is accompanied by a personal check, the Commissioner of Public Lands reserves the right to withhold approval of the Assignment until the check is paid.
7. **ASSIGNMENT DISAPPROVAL:** An Assignment will not be approved when it is made:
 - A. to more than two persons;
 - B. for less than a regular subdivision. "Regular subdivision" means forty acres or a tract described by lot number, which tract may be more or less than forty acres;
 - C. for an undivided interest;
 - D. in the name of a trusteeship, unless the trust document is attached or on file, and not more than two persons are named as trustee;
 - E. after a lis pendens is filed;
 - F. including any change or addition to the language contained in the Assignment form;
 - G. where surety requirements have not been met; or
 - H. where the lease is not in good standing; provided, however, that approval by the Commissioner does not waive any rights or claims the Commissioner may have to rentals, royalties, or other obligations due to the Commissioner by the Assignor under the lease. Approval of the assignment by the Commissioner does not guarantee the lease is in good standing.
8. **COMPLETE ADDRESS:** An Assignment must show the complete mailing address of the Assignee.
9. **ACKNOWLEDGMENT:** An Assignment must be executed before an officer authorized to take acknowledgments of deeds. Persons executing on behalf of a corporation or other business entity must indicate title or authority to execute.
10. **MARITAL STATUS:** An Assignment must show whether the Assignors are married or single; if married, both husband and wife must sign the Assignment. The Certificates of Acknowledgment must show the marital status of the Assignors.
11. **BLANKET ASSIGNMENTS:** Must have an Exhibit A attached that includes lease number, original lessee of record, lease issue date, county, and land description. Provide a copy of the original assignment form and the exhibit for every lease.
12. **BLANKET ASSIGNMENTS:** Will only be approved for record title. All other types of assignments (operating rights, depth limitations, undivided interests, etc.) will be filed as miscellaneous instrument documents for record purposes only.
13. **COMMUNICATIONS:** All official business, letters and communications must be addressed directly to the Commissioner of Public Lands; Oil, Gas, and Minerals Division.
14. **PAYMENT:** Make all payments for annual rental, recording, and approval of fees to:

 COMMISSIONER OF PUBLIC LANDS
 P.O. Box 1148
 Santa Fe, NM 87504-1148

**STATE OF NEW MEXICO
COMMISSIONER OF PUBLIC LANDS
GRANT OF RIGHT-OF-WAY**

Right-of-Way Easement No. RW-29657

This indenture, made this 8th day of February, 2006 by and between the State of New Mexico, acting by and through its Commissioner of Public Lands, "Grantor" Duke Energy Field Services, L.P. whose address is 370 17th Street, Suite 2500, Denver, CO 80202, "Grantee";

WITNESSETH:

That Grantor, for and in consideration of the sum of \$34,743.80----- Thirty-Four Thousand Seven Hundred Forty-Three Dollars and 80/100----- cash in hand, receipt of which is hereby acknowledged, and other good and valuable consideration, hereby conveys to grantee a right-of-way for the sole and exclusive purpose of three buried pipelines – 1-10" gas, 1-4" fuel gas, and 1-4" utility line plus a surface facility on the entire SW ¼ of Section 30, T 18S, R 37E with a 1500x1500 fenced facility consisting of a compressor station, injection well, and well pad SEE STIPULATION ON PAGE 3 including the right to enter upon the real estate hereinafter described at any time that it may see fit to construct, maintain and repair the structures upon the right-of-way, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said right-of-way.

The right-of-way hereby granted covers a strip of land 30 feet in width in Lea County (ies), as more particularly described by the attached centerline description and survey plats, which are incorporated herein.

This grant is made upon the following express terms and conditions:

1. This right-of-way is granted for a term of 35 years. The grant may be renewed for additional periods upon application to Grantor. Any such renewals are subject to such terms and conditions as the Grantor may require, and payment of compensation.
2. Grantor reserves the right to authorize or grant rights-of-way or other easements to third parties, which may be parallel to, cross over or bisect this right-of-way. In such cases, the subsequent grantee may, at the discretion of the Grantor, be required to post a bond guaranteeing payment for damages to the installations and improvements of Grantee herein. In crossing any right-of-way for a highway, road, telephone, telegraph, transmission line, etc. Grantee herein will exercise due care so as not to interfere with said rights-of-way and will comply with all applicable laws, rules, and regulations in connection with the making of such crossings.
3. The right to grant additional rights-of-way or easements within this right-of-way belongs exclusively to Grantor. Grantor hereby agrees, however, that in the event Grantor elects to exercise such right and if Grantee herein is the New Mexico State Highway and Transportation Department, Grantor will secure in writing the agreement of subsequent right-of-way grantee that no facilities will be constructed or installed within the right-of-way subsequently granted without first obtaining from the Department a permit prescribing the conditions under which facilities may be placed within such right-of-way in accordance with the Department's applicable rules and regulations.
4. GRANTEE EXPRESSLY AGREES THAT PRIOR TO THE CONSTRUCTION OR INSTALLATION OF ANY FACILITIES WITHIN THE RIGHT-OF-WAY GRANTED HEREIN, GRANTEE WILL DETERMINE WHETHER THE RIGHT-OF-WAY IS WITHIN A PREVIOUSLY ESTABLISHED NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT RIGHT-OF-WAY, AND IF IT IS, GRANTEE WILL OBTAIN FROM THE DEPARTMENT A PERMIT THAT PRESCRIBES THE CONDITIONS UNDER WHICH

FACILITIES MAY BE PLACED WITHIN THE RIGHT-OF-WAY IN ACCORDANCE WITH THE DEPARTMENT'S APPLICABLE RULES AND REGULATIONS. GRANTEE FURTHER UNDERSTANDS AND AGREES THAT THE FAILURE TO OBTAIN SUCH PERMIT SHALL RESULT IN THE FORCIBLE REMOVAL BY THE DEPARTMENT OF ANY FACILITIES THAT MAY BE CONSTRUCTED OR INSTALLED WITHIN THE RIGHT-OF-WAY.

5. In clearing the right-of-way, Grantee agrees to dispose of brush and other debris so as not to interfere with the movement of livestock of state agriculture lessees.
6. All pipelines placed on said lands by virtue of this grant shall be buried not less than twenty inches (20") deep. An exception to this requirement may be granted on other than agricultural lands when hard rock is encountered which would require blasting, or when a temporary pipeline is necessary and will not unduly hamper other surface uses. Deviation of the twenty-inch depth must be shown on the plat accompanying the application for right-of-way or by the filing of an amended plat upon completion of construction.
7. Grantee hereby agrees to carefully avoid destruction or injury to any improvements or livestock lawfully upon the premises described herein, to close all gates immediately upon passing through same, and to pay promptly the reasonable and just damages for any injury or destruction arising from construction or maintenance of this right-of way.
8. Grantee shall not assign this right-of-way without the prior written approval of Grantor. Such approval may be conditioned upon the agreement by Grantee's assignee to additional conditions and covenants and may require payment of additional compensation to Grantor. This right-of-way is for the sole purpose stated and no other. Grantee agrees not to sell or otherwise grant to any person or entity any interest therein or the right to use any portion thereof.
9. The rights granted herein are subject to valid existing rights.
10. Grantor reserves the right to execute leases for oil and gas, coal, and minerals of whatsoever kind and for geothermal resources development and operation, the right to sell or dispose of same and the right to grant rights-of-way and easements related to such leasing.
11. In all matter affecting the premises described herein or operations thereon, Grantee, its employees, agents and contractors shall, at their own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of any governmental authority or agency, which may be enacted or promulgated, including, but not limited to, requirements or enactment's pertaining to conservation, sanitation, aesthetics, pollution, cultural properties, fire, or ecology, including those provisions of the New Mexico Cultural Properties Act, §§18-6-1 through 17, NMSA 1978, that attach criminal penalties to the appropriation, excavation, injury or destruction of any site or object of historical, archaeological, architectural, or scientific value located on state lands. In addition, Grantee, its employees, agents and contractors must comply with the provisions of the Pipeline Safety Act, §§ 70-3-11 through 20, NMSA 1978, and rules enacted pursuant to the Act, and agree to provide the Public Regulation Commission access to records of compliance.
12. Non-use of the right-of-way granted herein for any period in excess of one (1) year without the prior written consent of Grantor shall be conclusive proof of abandonment of the right-of-way, and non-use for shorter periods shall place upon grantee the burden of providing that there was no intent to abandon. Grantee, if other than a governmental entity that is provided immunity

from suit by the New Mexico Tort Claims Act, agrees to save and hold harmless, defend and indemnify the State of New Mexico, the Commissioner of Public Lands, and his agents or employees, in their official and individual capacities, of and from any and all liability, claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of Grantee, its employees, agents, or contractors hereunder.

13. Notwithstanding anything contained herein, Grantor may cancel this grant for violation of any of the covenants of this agreement; provided, however, that before any such cancellation shall become effective, Grantor shall mail to grantee or any approved assignee, by certified mail addressed to the post office address of Grantee or such assignee shown by Land Office records, a thirty (30) day notice of intention to cancel, specifying the default for which the grant is subject to cancellation. No proof of receipt of notice shall be necessary and thirty (30) days after such mailing, Grantor may enter cancellation unless Grantee shall have sooner remedied the default to the satisfaction of Grantor.
14. Grantee agrees to preserve and protect the natural environmental conditions of the land encompassed in this grant, and to take those reclamation or corrective actions that are accepted soil and water conservation practices and that are deemed necessary by Grantor to protect the land from pollution, erosion, or other environmental degradation.
15. Grantee agrees to reclaim by grading, leveling, or terracing all areas disturbed by the construction or maintenance of the right-of-way or operations thereon and to landscape such areas at its own cost and expense. Landscaping shall include the planting of native grasses, shrubs, or other vegetation so as to return disturbed areas to their natural state and prevent water and wind erosion.
16. This grant shall become effective upon its execution by Grantor.

STIPULATION:

A final plan of the design, construction, maintenance and safety testing of the pipeline and all reports dealing with pipeline and process safety design must be acceptable to the Grantor before construction begins. Between the time this Right-of-Way is executed and the beginning of construction, Grantee will provide Grantor with a design for the acid gas injection well surface and subsurface equipment which will be certified and stamped by a professional engineer licensed in New Mexico.

A final plan of the design, construction, maintenance and safety testing of the pipeline and all reports dealing with pipeline and process safety design will be submitted to the State Land Office (SLO) for review. Duke Energy Field Services, L.P. plans on utilizing its own in-house pipeline safety engineer and an outside third party process safety engineering firm

Duke Energy Field Services, L.P. will design, construct, pressure test, operate, and maintain the pipeline according to DOT 49 CFR 192 Transportation of Natural and Other Gases by Pipeline: Minimum Federal Safety Standards.

The pipeline will be constructed as a double-wall design with corrosion-resistant high density polyethylene (HDPE) liner inside a 10" carbon steel outer wall and buried at least 36" deep. The pipeline will have a Maximum Allowable Operating Pressure (MAOP) of approximately 100 psig and will be hydro tested to 1.5 times MAOP (about 150 psig). An external protective coating and cathodic protection will be applied to the outer pipe to help prevent external corrosion.

The pipeline is to be fully safety and utility tested upon its completion, and before use. The type and nature of these tests will be sent to the SLO for review. The results of this testing are to be submitted in full, to the SLO, immediately upon availability.

Emergency protocol and planning is to be detailed in writing and submitted to the SLO before transportation of material through pipeline may commence.

Integrity testing shall be submitted to the SLO immediately following completion, Duke Energy Field Services, LP will develop an Integrity Management Plan (IMP) that describes the testing and will submit this plan in full to the SLO immediately following completion.

The pipeline is to be monitored by Supervisory Control and Data Acquisition (SCADA) technology at all times, as well as a qualified individual familiar with acid-gas pipeline systems.

All normal day-to-day operating data, to include pipeline pressure and compressor discharge temperature, gathered by the SCADA technology is to be recorded and submitted to the SLO in full on a semi-annual basis.

The inner HDPE liner will be enclosed by a large diameter carbon steel pipe. The minimal annular space between the OD of the HDPE liner and ID of the steel pipe will have monitoring valves on each section of lined pipe to check the integrity of the HDPE liner during line patrols.

The pipeline will be marked with Duke Energy Field Services, L.P. pipeline markers and patrolled a minimum of 26 times each calendar year with intervals not exceeding 3 weeks between patrols. A report is to be generated immediately following each patrol, a copy of which must be forwarded to the SLO on a semi-annual basis.

PAYMENT

An annual payment of five thousand dollars (\$5,000.00) will be made by the Grantee during years one and two of the Right-of-Way. In year three, the Grantee may elect to pay a lump sum of three hundred fifteen thousand dollars (\$315,000.00) or pay according to the attached payment schedule.

GRANTEE:

By: Joshua B. Epel

ACKNOWLEDGMENT

STATE OF New Mexico)
COUNTY OF Santa Fe) ss.

The foregoing instrument was acknowledged before me this 8 day of February, 2006,
by Joshua B. Epel, of Duke Energy Field Service^a
Delaware corporation, on behalf of said corporation.

My Commission Expires:

April 22, 2009

Barbara J. Medrano
NOTARY PUBLIC

STATE OF NEW MEXICO

BY: Robert Stranahan

ROBERT STRANAHAN
GENERAL COUNSEL, NM STATE LAND OFFICE

PAYMENT SCHEDULE

Year	AMT
	\$
1	5,000
	\$
2	5,000
	\$
3	7,000
	\$
4	7,210
	\$
5	7,426
	\$
6	7,649
	\$
7	7,879
	\$
8	8,115
	\$
9	8,358
	\$
10	8,609
	\$
11	8,867
	\$
12	9,133
	\$
13	9,407
	\$
14	9,690
	\$
15	9,980
	\$
16	10,280
	\$
17	10,588
	\$
18	10,906
	\$
19	11,233
	\$
20	11,570
	\$
21	11,917
	\$
22	12,275
	\$
23	12,643
	\$
24	13,022
	\$
25	13,413

Right-of-Way Easement No. RW-29657

	\$	
26	13,815	
	\$	
27	14,230	
	\$	
28	14,656	
	\$	
29	15,096	
	\$	
30	15,549	
	\$	
31	16,015	
	\$	
32	16,496	
	\$	
33	16,991	
	\$	
34	17,501	
	\$	
35	18,026	
	\$	
Total	395,545	