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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
2007 OCT 8 AM 9 37

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

**CASE NO. 13927
De Novo**

**APPLICATION OF YATES PETROLEUM CORPORATION FOR A NON-STANDARD
GAS SPACING UNIT, EDDY COUNTY, NEW MEXICO.**

MOTION TO DISMISS *DE NOVO* APPEAL

YATES PETROLEUM CORPORATION ("Yates")¹, through its undersigned attorneys, hereby moves the Oil Conservation Commission for an order dismissing the de novo appeal of the Ard Energy Group, LTD ("Ard") of Oil Conservation Division Order No. R-12790, and in support hereof states:

Non-Standard Spacing Unit:

1. In this case, Yates seeks an order approving a 160-acre non-standard gas spacing unit comprised of the SW/4 of Section 28, Township 20 South, Range 28 East, NMPM, in the Strawn formation, Salazar-Strawn Gas Pool (84412). No other approval is sought by Yates with this application.

2. Yates is the lessee and only working interest owner in the SW/4 of Section 28 and this is the only acreage in Section 28 that has not been dedicated to a well that has produced from the Strawn formation.²

3. At the examiner hearing in this case, Ard stated that it has no objection to the proposed non-standard spacing unit. See, Case. No. 13927, Transcript at 35.

¹ The Yates Companies who own the working interest in the SE/4 of Section 28 include Yates Petroleum Corporation, Yates Drilling Company, MYCO Industries, Inc. and ABO Petroleum Corporation. In this motion, these companies are collectively referred to as "Yates."

² The N/2 of this section is a standard 320-acre spacing unit that is dedicated to the COG, LLC Blue Ridge 28 State Well No. 1 that currently produces from the Burton Flat-Atoka Gas Pool and the SE/4 of this section is a Division-approved non-standard spacing unit dedicated to the Burton Flat Deep Unit Well No. 13 that produces from the Strawn formation. At the request of the operator of the Burton Flat Deep unit, Yates previously waived objection to its application for the creation of the nonstandard unit comprised of the SE/4 of this section.

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Use of Hedgerow BFH State Com Well No. 1:

4. Yates plans to re-complete its Hedgerow BFH State Com Well No. 1 that currently produces from the Atoka formation and dually complete the well with the Strawn formation..

5. The Ards object to this application because they oppose the use of this well and assert a contract claim to an interest in the Hedgerow wellbore.³

6. Ard's contentions concerning wellbore ownership requires an interpretation of a Joint Operating Agreement which is a matter outside the Division' jurisdiction.

7. After hearing the Ard's claims, the Division found that "Ard's contentions regarding wellbore ownership raise issues of property and contractual rights that the Division does not have jurisdiction to determine." Order No. 12790, Finding (15)

8. The Ard's objections to this application raise only issues that are outside the jurisdiction of the Commission and cannot be decided in this forum.

October 11, 2007 Commission Hearing:

9. At the Examiner hearing on this application, Yates testified about its need to re-complete this well (Case 12790, Transcript at 16) and about a conversation in which the Ard's had discussed dragging out this case. Case 12790; Transcript at 28

10. The Division entered Order no. R-12790 in this case on July 16, 2007. On August 15, 2007, the last day during which Ard could seek review of this order by the Commission, Ard filed its application for hearing de novo.

11. Division Rule 1211.B (1) provides that "Any party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented , their attorney...at least four business days in advance of a scheduled hearing before the division or commission, but in no event later than 5:00

³ Ard's claim requires an interpretation of a Joint Operating Agreement and the effect of a Communitization Agreement covering the S/2 of this section that the Ards refused to sign. and was finally approved by the State land office without Ard's signature. it also requires a determination of the rights of the parties in the wellbore based on these contracts and the fact that the Unit operator and the owners of more than 99% of the working interest in the Burton Flat-Deep Unit - cotenants with the Ards in this property - have consented to the use of the wellbore as a dually completed Strawn - Atoka well.

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pm mountain time, on the Thursday preceding the scheduled hearing date.” This rule also requires that the Pre-hearing statement contain a concise statement of the case and the names of witnesses to be called.

12. Division Rule 1211.B(2) provides that “Any party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reason for such support or opposition. In cases heard by the commission, each party shall include copies of all exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement...”

13. To comply with the Commission’s procedural rules, Ard was required to file a pre-hearing statement identifying its witnesses and copies of the exhibits it intended to use at the October 11, 2007 Commission hearing no later than 5:00 pm mountain time, on the Thursday, October 4, 2007.

14. Ard did not file a pre-hearing statement identifying its witness or the extent to which it opposes the issuance of the order the applicant seeks and the reason for such opposition as required by Rule 1211.B(2).

15. Ard did not file copies of all exhibits that it proposes to offer in evidence at the hearing with a pre-hearing statement as required by Rule 1211.B(2).

16. Since Ard has not identified either its witnesses, the issues it intends to raise in opposition to the application of Yates for approval of a nonstandard spacing unit, nor filed copies of any exhibits it plans to offer at the hearing, Yates objects to the admission of any evidence at the hearing that was not properly identified by Ard.

17. Since Ard did not identify its issues or file copies of its exhibits, Yates can only assume that the statement made by Ard at the Examiner hearing that “Ard has no objection to the nonstandard proration unit...” remains the correct statement of their position in this case.

18. Since this is the only thing Yates seeks with this application, there is no issue to present to the Commission at the October 11, 2007 hearing on this application and the de novo

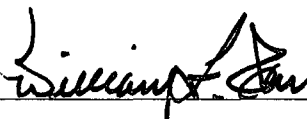
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appeal should be dismissed.

19. if Ard proposed to again attempt to argue the issues concerning the an interpretation the Joint Operating Agreement and the rights of occupancy and accountability of co-owners in this spacing unit, Yates submits that Ard is in the wrong forum and the application for hearing de novo should be dismissed.

WHEREFORE, Yates Petroleum Corporation seeks an order dismissing the de novo appeal of order No. R-12790 filed by Ard in this case and confirming the terms and provisions of Order no. R-12790.

Respectfully submitted,
Holland & Hart, LLP

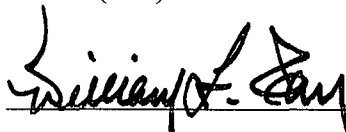
By: 
William F. Carr

ATTORNEYS FOR YATES PETROLEUM
CORPORATION

CERTIFICATE OF SERVICE

I certify that on October 7, 2007, I served a copy of the foregoing document to the following by facsimile on:

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