

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO**

IN THE MATTER OF CHANGES TO THE	)	CAUSE NO. 1R
RULES AND REGULATIONS OF THE OIL	)	
AND GAS CONSERVATION COMMISSION	)	DOCKET NO. 0803-RM-02
OF THE STATE OF COLORADO	)	

**COLORADO OIL & GAS ASSOCIATION**

**SECOND SUPPLEMENTAL PROPOSAL ON CONDUCT OF HEARING & TIME ALLOCATION**

At its hearing on the motions in this proceeding, the Commission asked the parties to provide confirmation of requested time allocations, and/or suggested re-ordering of the topics to be addressed. The Commission asked that this be provided on Tuesday, May 27, for the benefit of Hearing Officer Epel, Commissioner Martin, and Director Neslin, who were charged with revisiting these issues as outlined preliminarily in the Third Prehearing Order.

COGA's proposal with respect to the order of topics in the proceeding follows. With respect to each of the Draft Rules, COGA believes that all of the following areas must be addressed:

- Review of evidence demonstrating the need for the draft rule, and rebuttal thereto.
- Review of asserted public benefits of the draft rule and its impact on the industry.
- Review of operational and technical considerations relating to the draft rule.
- Legal issues related to the draft rule.
- Basin-specific issues and modifications to the draft rule, as may proposed by industry.

In general, this rule-by-rule review, with the exception of basin-specific proposals made by industry, should occur via commissioner questions based on the prefiled testimony of the parties, *and not be charged to party time allocations*. If this procedure is followed, it will maximize the productive use of the time allocated for Commissioner questions and answers by the parties, facilitate consistent decision-making and building an effective rulemaking record, and alleviate, to a small degree, the time constraints on party participation in the rulemaking. These constraints, whereby the regulated community is restricted to twenty-minutes per party, remain unacceptable from COGA's perspective. This situation is not ameliorated by unrealistic reliance on the Commissioners' ability to even read, much less meaningfully review, the thousands of pages of prefiled written testimony. COGA and its member companies reserve all claims that the rulemaking proceeding violates due process requirements or is otherwise unlawful

Nevertheless, in an effort to be responsive to the Commission's desire to consolidate and limit witness presentation time, COGA has reduced its prehearing statement time request, as described below. *All COGA time requests herein are exclusive of other industry parties (except for Delta Petroleum and Questar Market Resources, which have consolidated their participation with*

*COGA) and are exclusive of commissioner questions and responses to rebuttal that may be proffered by the staff and other parties.*

### **Proposed Order of Hearing**

**1. Economic impacts** – consideration of the staff regulatory impact analysis, COGA’s prefiled regulatory cost analysis, individual company prefiled analyses, and any rebuttal thereto. It remains COGA’s position (as expressed in its prehearing statement, at page 4) that the Commission must conduct the economic impact review required by the Administrative Procedure Act in a holistic fashion. Segmenting this review in order to proceed rule by rule, as proposed by staff, will not allow the Commission to adequately consider the full impact of the Draft Rules upon the regulated community. Moreover, this consideration should inform the Commission’s review of every topic subsequently addressed.

COGA offers to reduce its witness time request in this regard from 2.0 hours to 1.0 hours, by presenting brief summaries only of the testimony found in COGA Prehearing Statement Exhibits A—D, making these witnesses available, however, for Commission questions and party cross-examination.

**2. Permitting, notice and consultation** – Rules 303, 305, 306.

COGA requests 0.25 hours for presentation of its alternative proposal (Exhibit A), and 0.25 hours for legal argument on the adjacent landowner and tenant notice issues discussed in its Prehearing Statement at pages 7—8. .

**3. Wildlife** – 1200 Series.

**4. Reclamation** – 1000 Series.

COGA does not request witness presentation time for these topics.

**5. Water issues** – Rules 317B, 900 Series, 1002.f.

**6. Odor, dust, aesthetics** – Rules 804, 805.

**7. Record-keeping** – Rules 205, 206, 210, 341, 907.

COGA suggests moving Rule 341 (bradenhead monitoring during well stimulation) to Topic 7, in accordance with Halliburton’s motion to be allowed to address these related issues together from the oilfield service provider perspective.

For topics 5—7, COGA had identified four rebuttal witnesses and requested 3 hours of presentation time in its Prehearing Statement. However, COGA will forego the presentations by Ms. Malerba and Mr. Levorsen regarding the URS Field Activities Report (pending COGA rebuttal exhibit), with the proviso that COGA will make them available for Commissioner questions and cross-examination. COGA thereby reduces its requested witness time allocation to 1.5 hours for Mr. Havics and Ms. Wright, for the purposes described in the COGA Prehearing Statement at pages 13—14.

**8. Safety** – Rules 603, 604.

With respect to this topic, COGA does not request witness presentation time, but wishes to reserve 0.25 hours of rebuttal/legal argument time should the Commission entertain party proposals to increase the setback from occupied structures.

**9. Planning** – Rules 216, 513, 521.

COGA does not request witness presentation time for these topics, but wishes to reserve 0.25 hours of time for legal argument with respect to Rule 521 (local government MOAs).

**10. Coalbed methane** – Rule 608.

**11. Hearings and process** – Rules 503, 523.

**12. Bonding** – 700 Series.

COGA does not request witness presentation time for these topics.

**13. Midstream issues.** COGA understands that in granting the combined motion of DCP Midstream and Williams Field Services, this issue is to be heard at the end of the substantive rulemaking. COGA does not request witness presentation time for this topic.

COGA wishes to reserve 0.25 hours for a closing statement at this point in the hearing, in advance of Topic 14.

**14. Implementation, effective date** – Rule 201A.

In sum, COGA has reduced its time request for witness presentations from 6.0 hours to 2.75 hours. Including legal argument (1.0) and cross-examination (0.5 hours), COGA's current time request is for 4.25 hours. COGA *does not* request or support any notion that it should be granted this minimal time allocation from the wholly-inadequate 12.0 hours allocated to all industry parties in the Third Prehearing Order.

COGA further requests that the next prehearing order provide that the participation of the COGCC staff in this proceeding, except as to direct questions from the Commission as to other parties, will be charged to its time allocation. COGA understands that staff's time allocation includes all agency and outside witnesses for its prefiled testimony, all rebuttal regarding the prefiled testimony of the parties, and all cross-examination conducted by, or on behalf of, the staff. COGA does not believe that staff should have the privilege, as was granted at the motions hearing, to "wrap up" the consideration of each topic and make recommendations to the Commission for action. If staff wishes to make closing arguments in this fashion, it should be charged to the staff time allocation.

**RESPECTFULLY SUBMITTED THIS 27<sup>TH</sup> DAY OF MAY, 2008:**

*/S/ KENNETH A. WONSTOLEN*

---

Kenneth A. Wonstolen, #11080  
Fulbright & Jaworski L.L.P.

**COUNSEL FOR THE COLORADO OIL & GAS ASSOCIATION**

THIS DOCUMENT WAS ELECTRONICALLY SERVED ON THE COMMISSION, THE DEPARTMENT OF LAW,  
AND THE PARTIES.