

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

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

PETRO-CANADA RESOURCES (USA) INC.'S

REBUTTAL STATEMENT

COMES NOW Petro-Canada Resources (USA) Inc. (hereinafter "PCR"), by and through its counsel, Beatty and Wozniak, P.C. and submits this REBUTTAL STATEMENT and as grounds therefore states as follows:

Introduction

The Commission, in a rule-making proceeding, is constrained by the statutory requirements when promulgating rules. Among the statutory elements is the requirement that the record demonstrate a need for promulgating each rule. PCR maintains that the record before this Commission does not support the statewide application of these rules especially in Weld County, Colorado. There is no information in the record that demonstrates a need for rule changes in the areas covered by Rule 318A. In fact, other than conclusory allegations that proposed rules should apply statewide, little specific information is presented in the record regarding Weld County and any such reference does not identify any problem. There is however, ample evidence before the Commission that the application of these rules will harm the economic interests of Weld County and the small businesses that rely on the oil and gas industry for their livelihoods. As a result, these rules, if promulgated, should not include Weld County because the record does not demonstrate a need for these rules in the Rule 318A area.

Restatement of Arguments in Prehearing Statement

PCR restates by reference the arguments contained in its Prehearing Statement that the existing rules 318A is more specifically tailored to oil and natural gas development in the Greater Wattenberg Area of the DJ Basin. After reviewing all of the prehearing statements filed by the parties to this matter including the Staff of the Oil and Gas Commission, the Department of Public Health and Environment and the Division of Wildlife, PCR submits that the record before the Commission in this proceeding does not demonstrate a need for these rules in Weld County. Moreover, no evidence about the need for the new Form 2A is presented and no justification is included respecting the need for black-tailed prairie dog or white-tailed prairie dog surveys in the industrial residential, agricultural and commercial areas of Weld County.

Commission Constrained to Record Before Promulgating Rules

Pursuant to C.R.S. § 24-4-103 (b) (I)-(V), this Commission must make a determination in this proceeding based upon at least factors. First, the “record of the rule-making proceeding [must] demonstrate[] the need for the regulation.” C.R.S. § 24-4-103 (b) (I). Therefore the Commission is constrained to consider only those matters before you in the written record and through testimony. For the reasons set forth below, the record before the Commission does not demonstrate a need statewide application of the proposed rules in every basin.

The record does not contain any information that the current rules need changing in every producing basin of the state. In fact, there is a dearth of evidence in the record about problems with oil and natural gas development in Weld County. Very few staff or other parties’ prehearing statements make reference Northeast Colorado in their testimony before this Commission. Those references cite no identified health, safety, or welfare, including protection of wildlife resources, issues as needing addressed by the Commission. Nor does that testimony demonstrate that the existing rules have not adequately addressed any problems that have arising in that area.

However, there is ample evidence that the current rules work in the DJ Basin. See prehearing statements of Anadarko, Weld County, Noble Energy, and Wells Ranch, LLP. This evidence outweighs the need to apply these rules in the northeast part of the state. As a result, the proposed alternatives under Rule 318A should be confirmed by this Commission to deal specifically with these areas. That way, the proposed rule changes can focus upon the areas where the issues have been identified – mainly the Western Slope and, in particular the Piceance Basin.

Another factor that is important for this Commission to consider is whether “the regulation is clear and simply stated so that its meaning will be understood by any party required to comply with the regulation.” C.R.S. § 24-4-103 (b) (III). The record amply demonstrates that many parties have different interpretations of how these rules will function. *See* Prehearing Statements of Club 20; American Royalty Council; National Association of Royalty Owners, Rocky Mountain Chapter; Wells Ranch LLP; Colorado Cattlemen’s Association, et al.

Additionally, this Commission needs to consider whether the “regulation does not conflict with other provisions of the law.” C.R.S. § 24-4-103 (b) (IV). Once again, there is little evidence proffered in support of the Draft Rules that clearly reconciles the conflicts with other provisions of law will be addressed. However, there is ample evidence before the Commission that these rules create conflicts with private property rights which are given extensive protections under the United States and Colorado Constitutions. *See* Prehearing Statements of Club 20; American Royalty Council; National Association of Royalty Owners, Rocky Mountain Chapter; Wells Ranch LLP; Colorado Cattlemen’s Association, et al. Indeed, one of the most troubling aspects of the confusion and conflicts created by these Draft Rules is that it will require a case by case application of these rules and their interaction with private mineral interests and other landowners. From a policy standpoint, this confusions and the application of these Rules will likely flood the court system in Colorado with claims by private landowners, mineral interests owners and lessees.

Cost Benefit and Regulatory Analysis

The COGCC Cost Benefit and Regulatory Analysis (“CBRA”) grossly underestimates the impact these rules will have on the oil and gas industry in Colorado. COGCC performed a Cost Benefit and Regulatory Analysis. This analysis is deficient in many ways as outlined by COGA, in their testimony and rebuttal statement that includes an analysis of the CBRA and the COGA analysis.

Further, PCR included a report with its Prehearing Statement from Professor Paul Teske that specifically addressed the economic impacts to the State from imposing the rules on an operator in the Greater Wattenberg Area. No staff testimony from the staff level addresses the regulatory impacts or cost-benefit in the GWA.

Surface Drinking Water Setbacks – Rule 317B and Rule 1209.b (16)

The Colorado Environmental Coalition cites an EPA study that inspected oil and gas sites throughout the west for violations and some were found to have violations. However, the report supports the fact that existing regulatory mechanisms work and the matters were fixed. There is nothing in the report that indicates ongoing pollution of water associated with these activities. In fact, other than newspaper articles and reports prepared by anti-industry organizations, there is no real factual support for the need to have these exclusion zones. Nor is there support for pitless drilling.

Nothing in the record before the Commission demonstrates that existing rules will not protect surface drinking water supply areas. There is no evidence of widespread pollution associated with oil and gas activities. Many cases mentioned have been remediated and closed which indicate that the existing Rules work to remediate damage and deter operators.

Adjacent Landowner Standing – Rule 503.b.8

The Colorado Environmental Coalitions (“CEC”) urges this Commission to provide standing to adjacent landowners for appealing drilling permits or requesting a hearing before the Commission. CEC at 24. As a basis for standing, CEC cites zoning statutes to support their argument. However, that law clearly provides standing for those individuals. The Oil and Gas Conservation Act does not provide standing for adjacent landowners. Notwithstanding this, adjacent landowners certainly do have legal recourse against an operator through the court system which deals with property disputes through nuisance and other property laws. The Oil and Gas Commission is not the venue to litigate surface disputes over oil and gas operations.

Further, the OGCA specifically provides the authority for notification of surface owners when drilling operations are going to begin. C.R.S. § 34-60-106(14). Because the Commission is limited to the authority granted to it by the legislature, additional notification of drilling operations would be in violation of their statutory authority.

CEC further states that surface owners typically don’t have the time, expertise or resources to challenge an oil and gas operations unless it is close enough to severely affect them and they can offer a realistic alternative. CEC at 27. On the one hand, CEC is saying that

landowners do not have the expertise to challenge permit decisions. However, apparently landowners do have the expertise to provide realistic alternatives to oil and gas drilling locations. This is patronizing and contradictory. Typically locations are based upon the need to access the subsurface geology and “realistic alternative[s]” offered by the landowner may not work in a technical sense. Where an operator seeks an exception location from existing spacing rules, the surface owners are given an opportunity to participate in the hearing if they are going to provide technical information contradicting the technical information submitted by the operator. Surface issues are a different matter to be worked out between the private parties.

1000’ Setbacks – Rule 603

The Setbacks from residential dwellings is not properly noticed before the Commission. Raising this issue now in these proceedings calls into question whether this issue is validly before the Commission since it is not within the scope of rules contemplated by this rulemaking. However, notwithstanding this, the reasons for the setback are not supported by the record before the Commission.

Wildlife Rules – 1200 Series

The wildlife rules appear to be focused on habitat protection and not on mitigating and improving habitat. Timing limitations do not eliminate habitat disturbances the remaining parts of the year. The rules do not engage in meaningful habitat improvements that will yield results on a year-round basis for the species. It continues the policy of viewing industry as an impact only and not a resource.

The rules further fail to address pre-existing disturbances such as roads, agricultural operations, all-terrain vehicle activity, to name a few. Some areas where oil and gas activity is taking place already have significant disturbances to which species have adjusted. Thus, any perceived disturbances.

In addition, it is unclear whether timing restrictions will allow an operator to access properties not covered by timing restrictions via properties containing such restrictions.

The requirement that development activity within any prairie dog colony be seasonally restricted is unnecessarily limiting and unwarranted. Prairie dogs are highly adaptable and quickly acclimate to vehicular and agricultural activities. Activities within a few hundred feet are soon ignored. Disturbance has not been noted as a cause for species decline in recent reviews of the status of Gunnison and whit-tailed prairie dogs (Knowles 2002, USFWS 2008), and is very unlikely to result in abandonment of established colonies. Poisoning, shooting, and plague are implicated as causal agents in prairie dog declines. None of these activities are associated with the oil and gas development industry.

Alternative Proposal

The Weld County Coalition, which includes Anadarko Petroleum Corporation, Noble Energy, Inc., Petro-Canada Resources (USA), Inc., American Royalty Council, and Weld County, jointly filed the Weld County Coalition Consensus Alternate Proposal (“Consensus

Alternate Proposal") on June 6, 2008, as provided by the First, Second and Third Prehearing Orders in this rulemaking process. PCR endorses and supports Commission adoption of the Consensus Alternate Proposal. PCR also requests that the Commission allow the Weld County Coalition separate time during the rulemaking hearing to provide testimony and respond to questions on the Consensus Alternate Proposal, as necessary. In addition, PCR reserves the right to call any necessary witness to address Commission questions or support the adoption of this alternative proposal.

Staff Clarifications Create Confusion for Commissioners

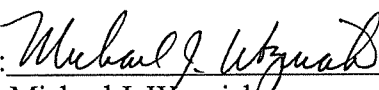
PCR objects to the filing of the FIRST RECOMMENDED CLARIFICATIONS OF DRAFT RULES on both procedural and substantive grounds. These clarifications were not timely promulgated but merely posted on the website in an electronic file that contained the draft rules with the clarifications at the end. Since that time, the file has been changed. However, there was never any actual notice of these clarifications either through a Colorado Register publication nor through a simple email to all the parties. This practice of just posting orders and changes to the website has become a common occurrence in these proceedings.

PCR further objects to the clarifications in that they contain new terms and may change the interpretation of these rules. This will create significant confusion to the Commission as they read the already voluminous record. For example, comments in one party's prehearing statement may be different based on the rebuttal statement. Thus, reconciling the matter might be confusing to the Commissioners given the constrained time commitment of the rule-making process.

Endorsement of other Rebuttal and Incorporate by Reference

To the extent an issue has not been addressed in this rebuttal statement, PCR hereby endorses and incorporates here in by reference the arguments of the Colorado Oil and Gas Association (COGA).

Respectfully submitted this 6th day of June, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2008, copies of the foregoing document entitled **PETRO-CANADA RESOURCES (USA) INC.'S REBUTTAL STATEMENT** were served as follows:

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