



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF REGULATORY COUNSEL

March 14, 2014

VIA E-MAIL

Glenda Davidson
Docket Clerk
Department of Environmental Protection
400 Market Street
Rachel Carson State Office Building
16th Floor
Harrisburg, PA 17101

RE: Hilcorp Energy Company
MMS No. 2013-SLAP-000528
Docket No. 2013-01

Dear Ms. Davidson:

Enclosed for filing in the above-referenced matter is the Commonwealth of Pennsylvania, Department of Environmental Protection's letter to Hearing Officer Bangs and Proposed Order.

Please call me if you have any questions concerning this matter. Thank you.

Sincerely,

/s/ Elizabeth A. Nolan

Elizabeth A. Nolan
Assistant Counsel
PA I.D. No. 309648

Enclosures

cc via e-mail: Michael L. Bangs, Hearing Officer
Hilcorp Energy Company
Kevin L. Colosimo, Esq.
Daniel P. Craig, Esq.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF REGULATORY COUNSEL

March 14, 2014

Michael L. Bangs, Esquire
Hearing Officer
Bangs Law Office, LLC
429 South 18th Street
Camp Hill, PA 17011

Re: Hilcorp Energy Company
MMS No. 2013-SLAP-000528
Docket No. 2013-01

Dear Hearing Officer Bangs:

As requested during the conference call held at 10:00 a.m. on March 13, 2014, the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) hereby proposes the following procedure for the participation of “any interested persons,” and for the participation of “royalty owners” and “operators” in the above-captioned matter regarding Hilcorp’s application for a well spacing order, pursuant to the Pennsylvania Oil and Gas Conservation Law (“Oil and Gas Conservation Law”), 58 P.S. §§401-419, and its regulations. Enclosed please also find a proposed order for your consideration that further identifies this procedure.

Section 10(b) of the Oil and Gas Conservation Law, 58 P.S. §410(b), provides that “[n]o rule, regulation, or *order* . . . shall be made by the commission without a public hearing upon at least fifteen days’ notice.” (emphasis added). Section 10(b) further provides in pertinent part, that the “public hearing shall be held at such time and place as may be prescribed by the commission, and *any interested person* shall be entitled to be heard.” (emphasis added). The term “interested” is not defined in the Oil and Gas Conservation Law. The term “person,” however, is broadly defined as “any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any department, agency or instrumentality of the Commonwealth, or any governmental subdivision thereof.” 58 P.S. §402; *see also* 25 Pa. Code §79.1.

The term “royalty owner” is defined in the Oil and Gas Conservation Law as, among other things, “any owner of oil and gas in place or oil and gas rights, subject to a lease covering such oil or gas in place or oil or gas rights.” In addition, the term “operator” is narrowly defined as, among other things, “any owner of the right to develop, operate, and produce oil and gas from the pool.” 58 P.S. §402; *see also* 25 Pa. Code §79.1.

400 Market Street, Rachel Carson State Office Building

717.783.7060 | Fax 717.783.7911

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The deliberate use of the term “any interested person” in Section 10(b) of the Oil and Gas Conservation Law, 58 P.S. §410(b), establishes that the Legislature clearly intended that a class of persons other than a “royalty owner” or “other operator” were “entitled to be heard.” If the Legislature meant otherwise as Hilcorp has suggested, it would have drafted Section 10(b) using the narrowly defined terms “royalty owner” or “other operator,” instead of the more broad term of “any interested person.”

Additionally, the Legislature’s intent to extend participation beyond “royalty owner” or “other operator” is also evident in Section 7(2) of the Oil and Gas Conservation Law, 58 P.S. §407(2), which requires notice in a newspaper in general circulation in each county where any land which may be affected by an order is located. If the Legislature intended for only “royalty owners” and “other operators” to have the opportunity to be heard at the hearing, it would have required that notice be provided to those parties only.

The regulations adopted under the Oil and Gas Conservation Law further support this distinction between interested persons, royalty owners and operators when they provide that “any *other operator or royalty owner* of land within the area sought to be covered by the prospective spacing order shall have the right to appear and oppose or support the spacing plan sought by the applicant and to present its own plan for consideration.” 25 Pa. Code §79.23(b) (emphasis added).

Lastly, the Oil and Gas Conservation Law and its regulations provide the Commission the authority to determine, in its discretion, the area to be covered by the spacing order and the size and shape of the spacing units which may vary from the proposed unit in an application, thereby potentially affecting a larger group of persons. Accordingly, persons outside of the area proposed in the application may be legally affected by an order establishing spacing units. *See* 58 P.S. § 407(4); 25 Pa.Code § 79.24.

Currently, the administrative hearing (similar to a trial) in this matter is scheduled to occur during business hours, over a two day period from March 25 to March 26, 2014. This schedule accommodates the more narrow category of “any other operator or royalty owner of land,” who under 25 Pa. Code §79.23(b), have a right to support or oppose Hilcorp’s application for a well spacing order, or to present their own plan of development. However, this two-day trial portion of the hearing is not sufficient to ensure compliance with the Legislative mandate under Section 10(b) of the Oil and Gas Conservation Law, 58 P.S. §410(b), that “any interested person shall be entitled to be heard” on the record.

DEP interprets the Legislative mandate under Section 10(b) broadly, and thus an additional session is necessary, after business hours, to hear testimony on the record from “any interested person.” *Schuylkill Twp. v. Pa Builders Assoc.*, 7 A.3d 249, 253 (Pa. 2010)

(Pennsylvania Supreme Court “gives substantial deference to an agency’s interpretation of a statute” and “an interpretation by the agency charged with a statute’s implementation is accorded great weight and will be overturned only if such a construction is clearly erroneous”).

Accordingly, DEP respectfully requests that an order be entered to add at least one or more evening hearing session(s) during the week of April 21, 2014, with a procedure that provides for all interested persons wishing to attend the evening session(s) to be given the opportunity to pre-register to reserve time for up to 5 minutes of verbal testimony and unlimited written testimony. Again, the proposed additional evening session(s) is/are necessary to ensure that this matter complies with the mandate that “any interested person” be heard on the record.

Finally, DEP does not agree with Hilcorp’s argument that a threshold determination of “interest” needs to be established by the Hearing Officer before a person would be allowed to testify at the evening session(s). The Oil and Conservation Law places no restriction on who qualifies as an “interested person” in this matter and, therefore, none should be placed by the Parties either.

All witnesses can provide their name and address and state their purported interest in the application on the record. After the written testimony is provided and oral testimony is recorded, the Parties and the Hearing Officer have the ability to review the record and set forth argument on the appropriate weight to be given to any of the testimony recorded.

Accordingly, DEP respectfully requests that the Hearing Officer approve the attached proposed order as the most efficient way of moving forward, while ensuring compliance with the Legislative mandate under Section 10(b) of the Oil and Gas Conservation Law, 58 P.S. §410, that “any interested person shall be entitled to be heard” on the record.

DEP has verified that the room for the March 25 and March 26, 2014 hearing can accommodate DEP, Hilcorp, their attorneys and an additional fifty people. Because of the expressed public interest in attending this hearing, DEP has consulted with the Lawrence County Administrator regarding a larger hearing room. We were able to reserve the Assembly Room in the Albert P. Gettings Government Center Annex of the Lawrence County Government Center, 439 Countyline St, New Castle, Pa. 16101. The Lawrence County Administrator advised that this room will accommodate up to 500 people. DEP now requests that the hearing scheduled for March 25 and March 26, 2014, be relocated to this room.

Given the unprecedented nature of this hearing and intense public interest, DEP urges in the strongest terms possible that the public have full access to the hearings on March 25 and 26 and interested persons have a meaningful opportunity to be heard at a session designed specifically for that purpose. For these reasons, if you determine that additional hearing sessions for “any interested persons” are not going to be held, DEP respectfully requests the hearing

Michael L. Bangs, Esquire

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scheduled for March 25 and March 26, 2014, be postponed to allow for greater participation by interested persons at the hearing. Anything less will be inconsistent with the Oil and Gas Conservation Law and may undermine public confidence in any recommendation made on the application.

Thank you, and please contact me if you have any questions.

Sincerely,

/s/ Elizabeth A. Nolan
Elizabeth A. Nolan
Assistant Counsel
PA I.D. No. 309648

Enclosure: Proposed Order

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT

In Re. The Matter of the Application of)
Hilcorp Energy Company for)
Well Spacing Units) Docket No. 2013-01
)

PROPOSED ORDER

AND NOW THIS _____ day of March, 2014, it is ordered and directed as follows:

1. The first session of the hearing shall be held as scheduled on March 25 and 26, 2014 at the Albert P. Gettings Government Center Annex of the Lawrence County Government Center, Assembly Room, 439 Countyline St, New Castle, Pa. 16101 (First Session).
2. At the First Session, any and all “royalty owners” and/or “other operators” as those terms are defined in Section 2 of the Pennsylvania Oil and Gas Conservation Law (Oil and Gas Conservation Law) 58 P.S. §402, that are located within the proposed spacing order shall be given the opportunity to support, oppose, and/or present their own plan of development as provided for in 25 Pa. Code §79.23(b).
3. DEP will mail a copy of this Order to the list of property owners provided by Hilcorp within two (2) days from the date of this order. “Royalty owners” and/or “other operators” wishing to present testimony at the First Session shall contact Glenda Davidson at 717-787-4449 prior to the March 25 and provide the following: name, status as a “royalty owner” and/or “other operator”, address and phone number.
4. A second session of the hearing shall be held during the evening hours on a date to be determined and at a location to be determined _____ [*sometime during the week of April 21, 2014???*] (Second Session). At the Second Session, all interested persons shall be offered an opportunity to be heard regarding the proposed well spacing application as provided for in Section 10(b) of the Oil and Gas Conservation Law, 58 P.S. §410.

5. Within seven days (7) from the date of this order, Hilcorp Energy Corporation (Hilcorp) and the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) shall submit to the Hearing Officer available dates for the Second Session. Within two (2) days thereafter,

6. DEP shall reserve a suitable location for the Second Session, and shall notify Hilcorp and the Hearing Officer.

7. Upon receiving the available dates from Hilcorp and DEP and notification of a location from DEP, the Hearing Officer will issue an order setting forth the date, time, and location of the Second Session.

8. Upon receipt of the Hearing Officer's order, identified in Paragraph 6, above, DEP shall provide a public notice indicating the date, time, and location of the Second Session.

9. Interested persons wishing to present testimony at the Second Session are requested to contact Glenda Davidson at 717-787-4449 seven (7) days prior to date of the Second Session to reserve a time to testimony and provide the following: name, address, phone number and a brief statement of interest. Oral testimony will be limited to 5 minutes for each party. Witnesses will be requested to submit three written copies of their verbal testimony to the Hearing Officer. The purpose of the Second Session is to receive testimony on the Application. For that reason, the Hearing Officer, DEP or Hilcorp may not address questions about the application during the public testimony part of the hearing, but may respond to issues raised at the conclusion of the public testimony portion of the hearing. All testimony given at the Second Session will be on the record and considered.

Michael L. Bangs
Hearing Officer

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS MANAGEMENT

In Re. The Matter of the Application of)
Hilcorp Energy Company for)
Well Spacing Units) Docket No. 2013-01
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEP's letter to Hearing Officer Bangs in the above-captioned matter was this day served upon the following Counsel for Hilcorp *via* E-mail:

Kevin L. Colosimo
Daniel P. Craig
Burlison LLP
501 Corporate Drive, Suite 105
Canonsburg, PA 15317
dcraig@burlisonllp.com

Michael L. Bangs
Bangs Law Office, LLC
429 South 18th Street
Camp Hill, PA 17011
Hearing Officer
mikebangs@verizon.net

Glenda Davidson
Department of Environmental Protection
400 Market Street
Rachel Carson State Office Building, 16th Floor
Harrisburg, PA 17101
Docket Clerk
gdavidson@pa.gov

Respectfully submitted,

COMMONWEALTH OF
PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

/s/ Elizabeth A. Nolan
Elizabeth A. Nolan, PA I.D. No. 309648
Assistant Counsel
elnolan@pa.gov
Bureau of Regulatory Counsel
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Date: March 14, 2014