



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NORTHWEST REGIONAL COUNSEL

April 10, 2014

## VIA E-MAIL

Glenda Davidson  
Docket Clerk  
Department of Environmental Protection  
400 Market Street  
Rachel Carson State Office Building  
16<sup>th</sup> 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 Response to Hilcorp's Motion to Depose the Department's Expert Witnesses, and Proposed Order.

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

Sincerely,

/s/ Michael A. Braymer  
Michael A. Braymer  
Assistant Counsel  
PA I.D. No. 89215

Enclosures

cc via e-mail: Michael L. Bangs, Hearing Officer  
Elizabeth Nolan, Esq.  
Donna L. Duffy, Esq.  
Kevin L. Colosimo, Esq.  
Daniel P. Craig, Esq.

**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  
   )

**DEP'S RESPONSE TO HILCORP'S MOTION TO DEPOSE  
DEP'S EXPERT WITNESSES**

NOW COMES, the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"), and files this Response to Hilcorp Energy Company's ("Hilcorp") Motion to Depose DEP's Expert Witnesses. In support of this Response, DEP avers the following:

1. Admitted.
2. Admitted in part, denied in part. It is admitted that Hilcorp has submitted two affidavits from two experts as part of its Application for a spacing order. It is denied that the affidavits submitted with the Application "sets forth its position in a great detail." By way of further answer, the affidavits of Hilcorp's experts are a series of legal conclusions with limited factual support.
3. Admitted. By way of further answer, DEP and Hilcorp will provide information and evidence to the Hearing Officer regarding the Application at the hearing on the Application scheduled for May 7-8, 2014, in accordance with the Pennsylvania Oil and Gas Conservation Law ("Oil and Gas Conservation Law"), 58 P.S. §§401-419, and its regulations at 25 Pa. Code Chapter 79, and the Administrative Agency Law, 25 Pa. Code Chapter 78, 1 Pa. Code Chapter 31, and 1 Pa. Code Chapter 35. After the Hearing the Hearing Officer will make a recommendation and the application will ultimately be granted or dismissed. Thus, the process results in the formation of the agency's, in this case DEP, position.

4. Admitted in part, denied in part. It is admitted that neither of DEP's expert witnesses have proffered a report, via affidavit or otherwise. It is denied that Hilcorp is unable to prepare an adequate examination of these witnesses. By way of further answer, Hilcorp has submitted the Application under the Oil and Gas Conservation Law, which provides for a hearing upon such Application. The hearing is Hilcorp's opportunity to present the necessary evidence needed to support its Application to warrant the issuance of a spacing order. On May 7-8, 2014, Hilcorp will be provided that opportunity. Not being able to conduct discovery depositions of DEP's expert witnesses before the hearing in no way impacts that opportunity.

5. Admitted in part, denied in part. It is admitted that the hearing required for the Application pursuant to the Oil and Gas Conservation Law is scheduled for May 7-8, 2014. The remainder of Averment 5 is specifically denied.

6. Admitted. By way of further answer, DEP and Hilcorp will provide information and evidence to the Hearing Officer regarding the Application at the hearing on the Application scheduled for May 7-8, 2014, in accordance with the Pennsylvania Oil and Gas Conservation Law ("Oil and Gas Conservation Law"), 58 P.S. §§401-419, and its regulations at 25 Pa. Code Chapter 79, and the Administrative Agency Law, 25 Pa. Code Chapter 78, 1 Pa. Code Chapter 31, and 1 Pa. Code Chapter 35. After the Hearing the Hearing Officer will make a recommendation and the application will ultimately be granted or dismissed. Thus, the process results in the formation of the agency's, in this case DEP, position.

7. Denied. It is specifically denied that it would be "fundamentally unfair" to Hilcorp to have to prepare for the hearing without the opportunity to conduct discovery of DEP's expert witnesses. Discovery as provided by the Pennsylvania Rules of Civil Procedure in court proceedings is not available in administrative proceedings. *Pa. Bankers Assoc. v. Pa. Dept. of*

*Banking*, 981 A.2d 975, 997 (Pa. Cmmwlth. 2009); See also, *Vaders v. Pa. State Horse Racing Comm.*, 964 A.2d 56, 58 (Pa. Cmmwlth. 2009); *D.E.L.T.A. Rescue v. Bureau of Charitable Organizations*, 979 A.2d 415, 428 (Pa. Cmmwlth. 2009); *Weinberg v. Pa. Insurance Depart.*, 398 A.2d 1120, 1121 (Pa. Cmmwlth. 1977). In administrative proceedings, including this administrative proceeding, due process only requires notice and opportunity to be heard. *Vaders*, 964 A.2d at 58. By way of further answer, Hilcorp has submitted the Application under the Oil and Gas Conservation Law, which provides for a hearing upon such Application. The hearing is Hilcorp's opportunity to present the necessary evidence needed to support its Application to warrant the issuance of a spacing order. On May 7-8, 2014, Hilcorp will be provided that opportunity. Not being able to conduct discovery depositions of DEP's expert witnesses in no way impacts that opportunity.

8. Denied. It is specifically denied that taking the discovery depositions of DEP's expert witnesses is in the best interest of judicial economy. First, as discussed in DEP's response to averment 7, above, discovery as provided by the Pennsylvania Rules of Civil Procedure in court proceedings is not available in administrative proceedings, including this administrative proceeding. Second, by way of further answer, the deposition process provided for in 1 Pa. Code §35.145, is not set for discovery purposes. The deposition process in 1 Pa. Code §35.145, is set as an alternative process to the requirement under 1 Pa. Code §35.137, that all witness be available at hearing to be examined orally. Finally, by way of further answer, depositions in the form requested by Hilcorp will result in an unnecessary and undue burden upon DEP's expert witnesses. If Hilcorp was interested in judicial economy, it would only be subjecting DEP's expert witnesses, Dr. Wang and Dr. Kleit, to one examination at hearing, instead of examination once at a deposition and again at hearing. Also, if Hilcorp was interested in

judicial economy, it would not be subjecting DEP's expert witnesses, Dr. Wang and Dr. Kleit to travel from State College to Pittsburgh for a deposition that is neither necessary nor made available in this administrative proceeding.

9. After reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of averment 9, and as such the same is denied. The availability of Dr. Kleit and Dr. Wang before April 30, 2014, are not known at this time. Thus, DEP cannot speak as to whether the proposed deposition would or would not cause a delay. Dr. Kleit and Dr. Wang are both professors at The Penn State University, and as such are busy dealing with their professorial duties at the end of current school year at The Penn State University.

10. The language in 1 Pa. Code §35.145, speak for itself and as such the same is denied. By way of further answer, the deposition process provided for in 1 Pa. Code §35.145, is not set for discovery purposes. The deposition process in 1 Pa. Code §35.145, is set as an alternative process to the requirement under 1 Pa. Code §35.137, that all witness be available at hearing to be examined orally. As discussed in DEP's response to averments 7 and 8, above, discovery as provided by the Pennsylvania Rules of Civil Procedure in court proceedings is not available in administrative proceedings, including this administrative proceeding. Hilcorp's request for the deposition of DEP's expert witnesses before the hearing is not in lieu of examining those witnesses orally at the hearing, but rather for discovery purposes only, which is not the purpose contemplated by 1 Pa. Code §§35.142-35.152.

11. After reasonable investigation, DEP is without sufficient knowledge to form a basis as to the truth of averment 11, and as such the same is denied. By way of further answer, DEP does not have knowledge as to whether the topics identified in Averment 11

represents the full scope of topics that Hilcorp would want to address at any oral examination of DEP's expert witnesses.

WHEREFORE, for the reasons stated above, DEP hereby requests that the Hearing Officer deny Hilcorp's Motion to Depose DEP's Expert Witnesses.

Respectfully submitted,

COMMONWEALTH OF  
PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

/s/ Michael A. Braymer  
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Date: April 10, 2014

**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**

NOW, this \_\_\_\_\_ day of April 2014, based upon Hilcorp Energy Company's Motion to Depose the Department's Expert Witnesses and the Department's response thereto, it is hereby ORDERED and DIRECTED that Hilcorp Energy Company's Motion is DENIED.

SO ORDERED,

\_\_\_\_\_  
Michael L. Bangs  
Hearing Officer

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

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of DEP's Response to Hilcorp's Motion to Depose DEP's Expert Witnesses and Proposed Order in the above-captioned matter was this day served upon the following *via* E-mail:

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Respectfully submitted,

COMMONWEALTH OF  
PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

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Date: April 10, 2014