

BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

In the Matter of Petitions for Rulemaking to)
determine the factors to be considered when)
determining whether the terms and conditions of an)
integration order are “just and reasonable”)

DENIAL OF PETITIONS FOR
INITIATION OF
RULEMAKING

On March 27, 2019, Richard ‘Mick’ Thomas, Oil and Gas Division Administrator (“Administrator”) at the Idaho Department of Lands (“Department”) and Secretary to the Idaho Oil and Gas Conservation Commission (“Commission”) issued a *Notice of Hearing to Vacate Order* in Docket No. CC-2016-OGR-01-004. This notice explained that on Tuesday, April 23, 2019, the Commission would allow the parties to Docket No. CC-OGR-2016-01-004 an opportunity to be heard regarding the Commission’s compliance with the Memorandum Decisions and Orders entered by the federal district court in *Citizens Allied for Integrity and Accountability, Inc. et al., v. Schultz et al.*, Case No. 1:17-cv-00264-BLW. Particularly, the Commission asked for testimony regarding the procedures and steps the Commission should take to determine terms and conditions that would fulfill the statutory requirement that “[e]ach such integration order shall be upon terms and conditions that are just and reasonable.”

As a result of that *Notice of Hearing to Vacate Order*, the Department received written comments on April 8 and April 9, 2019, some of which asked the Commission to initiate rulemaking. These written comments were presented to the Commission at its April 23, 2019 meeting. The Commission also allowed public comment at that meeting. After considering the written comments and listening to public comment at the April 23, 2019 meeting, the Commission unanimously denied the petitions for rulemaking and instead decided that for the current unit

proposed to be integrated and future units to be integrated, administrative orders would be used to determine, after notice and opportunity for hearing, what factors the Administrator would consider when determining whether the terms of integration order are “just and reasonable.”

The Commission based its denial of the petitions for rulemaking on the following:

1. The Commission believes an administrative order in each contested case can best achieve the direct involvement of mineral interest owners in each proposed unit to be integrated. An administrative order will allow each of the mineral interest owners in a proposed unit the opportunity to be involved in determining the factors used to determine “just and reasonable terms” for that unit. The Commission believes rulemaking would not as effectively ensure direct involvement of persons affected because it would take place once on a state-wide basis. Some mineral interest owners may be integrated years after the rulemaking takes place and would not be able to participate in the development of those factors at the time their unit was proposed to be integrated.
2. An administrative order allows the Administrator and the Commission to better address the factors to be considered when determining just and reasonable because an order allows mineral owners to participate in the development of unique factors for their specific unit. This ensures their participation will be meaningful because it gives them a voice when their mineral rights may be affected, and they can propose factors that are unique to their situation and the specific unit proposed. Mineral interest owners will then know those factors in advance so they can later meaningfully participate in the evidentiary hearing. The Commission believes an administrative order will accomplish this more effectively than rulemaking because factors determined through a state-wide

rulemaking may not be tailored to the specific and unique facts and circumstances of every proposed unit.

3. The Commission believes that rulemaking may not proceed as efficiently and effectively as using an administrative order because rulemaking is a lengthy process that involves the general public, not just people within a particular unit. Proceeding in an expeditious manner as to current integration applications and future integration applications ensures that Commission can efficiently issue orders that continue to protect the correlative rights of those mineral interest owners within in each unit.
4. Proceeding with an administrative order is consistent with the practices of other Oil and Gas Conservation Commissions. As a member state of the Interstate Oil and Gas Compact Commission, the Department asked that member states be surveyed regarding how they described the term “just and reasonable” Of the nineteen member states that responded with how they addressed the term, none indicated the term was defined in rule or statute, rather the term is typically described within the hearing process and at the discretion of the Commission of the respective state. An administrative order will preserve that discretion, which is consistent with the discretion Commissions exercise in other states.

The Commission has denied the petitions to initiate rulemaking. The denial of these petitions for rulemaking is a final agency action within the meaning of Idaho Code § 67-5230. Pursuant to Idaho Code § 67-5230, any person aggrieved by this denial may seek review of the denial by filing a petition for judicial review in the District Court of the county in which: (i) the hearing was held; (ii) the final agency action was taken; (iii) the party seeking review resides, or operates its principal place of business in Idaho; or (iv) the real or personal property that was the

subject of the denial of the petition for rulemaking is located. The appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking.

Idaho Code § 67-5273.

Dated this 6th day of May 2019.



Betty Coppersmith
Chairman of the Idaho Oil and Gas Conservation Commission



Richard "Mick" Thomas
Secretary to the Idaho Oil and Gas Conservation Commission


CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 2019, I caused to be served a true and correct copy of the *Denial of Petitions for Initiation of Rulemaking* by the method indicated below:

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