

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

IN THE MATTER OF AN AMENDED APPLICATION BY 8)	CAUSE NO. 407
NORTH LLC FOR AN ORDER ESTABLISHING A 2,720-)	
ACRE DRILLING AND SPACING UNIT FOR SECTIONS)	DOCKET NO. 171000695
13, 14, 23, AND 24, TOWNSHIP 2 NORTH, RANGE 69)	
WEST, 6 TH P.M. AND SECTION 18, TOWNSHIP 2)	TYPE: SPACING
NORTH, RANGE 68 WEST, 6 TH P.M., FOR)	
HORIZONTAL WELL DEVELOPMENT OF THE CODELL)	
AND NIOBRARA FORMATIONS, WATTENBERG FIELD,)	
BOULDER AND WELD COUNTIES, COLORADO)	

ORDER STRIKING SECOND PROTEST FILED BY BOULDER COUNTY

THIS MATTER is before the Hearing Officer on the motion of 8 North LLC ("8 North") to strike a second protest filed by Boulder County ("Motion"). The Motion was fully argued at a prehearing conference held on April 5, 2018, and the Hearing Officer enters the following order.

PROCEDURAL HISTORY

1. On August 31, 2017, 8 North filed an *Application* in this matter seeking an order, among other things, establishing an approximate 2,720-acre drilling and spacing unit for Sections 13, 14, 23, and 24, Township 2 North, Range 69 West, 6th P.M., and Section 18, Township 2 North, Range 68 West, 6th P.M., and authorizing the drilling of up to thirty-two (32) horizontal wells within the proposed unit, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations.
2. On September 19, 2017, 8 North modified the relief it was requesting by filing an *Amended Application* in this matter seeking an order, among other things, establishing an approximate 2,720-acre drilling and spacing unit for Sections 13, 14, 23, and 24, Township 2 North, Range 69 West, 6th P.M., and Section 18, Township 2 North, Range 68 West, 6th P.M., and authorizing the drilling of one (1) horizontal well within the proposed unit, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations.
3. On September 21, 2017, the Commission issued a *Notice of Hearing* reflecting the request for one (1) well in the 2.720-acre drilling and spacing unit.
4. A notice of hearing for the Amended Application was issued on September 21, 2018. Said notice required all protests to be filed no later than October 16, 2017.
5. On October 16, 2017, the *Protest and Intervention by Boulder County* ("Protest") was filed.
6. Crestone Peak Resources Operating LLC ("Crestone") also filed a protest on October 16, 2017. Crestone then filed an amended protest on November 27, 2017. At the prehearing conference held on April 5, 2018, Crestone withdrew its protest.
7. On December 6, 2017, 8 North filed its *Motion to Dismiss Protest of Boulder County* pursuant to Commission Rule 519 and C.R.C. P. 12(b)(5).

8. On December 13, 2017, Boulder County ("Protestant") filed their *Response to Motion to Dismiss* ("Response").

9. On December 18, 2017, 8 North filed its *Reply in Support of Its Motion to Dismiss Protest of Boulder County* ("Reply").

10. On January 2, 2018, the Hearing Officer entered his *Order Granting 8 North LLC's Motion to Dismiss Protest*.

11. Boulder County did not file an exception to the January 2, 2018, Hearing Officer *Order Granting 8 North LLC's Motion to Dismiss Protest* within the 30- day period allowed by §24-4-105(14)(a)(II), C.R.S.

12. On March 30, 2018, Boulder County filed a document entitled *Protest and Intervention Filed by Boulder County* ("Second Protest").

13. By email dated April 4, 2018, 8 North objected to the filing of the Second Protest and asked that the Hearing Officer reject the filing of the Second Protest. By email also dated April 4, 2018, the Hearing Officer advised the parties to be ready to argue the issue of the filing of the Second Protest at the upcoming prehearing conference set for April 5, 2018.

ANALYSIS

14. Commission Rule 519.c. provides that the Colorado Rules of Civil Procedure are applicable to Commission proceedings unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act.

15. Commission Rule 506.c. provides that any continuance of a hearing shall not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509, unless the application is amended, or as otherwise allowed by the Commission.¹

16. 8 North argued that the application in this proceeding, as amended, was originally filed, docketed and noticed for the October 30, 2017 hearing. Per the notice that was issued by the Commission pertaining to this docket, all protests were due by October 16, 2017, over five months ago. Boulder County did submit a timely protest to Docket No. 171000695, which was subsequently dismissed by the Hearing Officer by order dated January 2, 2018. Boulder County did not file an appeal of the order in Docket No. 171000695, nor did Boulder County request leave to file an amended protest.

17. 8 North further argued that the parties came to a mutual agreement concerning Boulder County's protest in the related Docket No. 171200774, whereby Boulder County was granted leave to file an amended protest in Docket 171200774 by March 22, 2018 in exchange for dropping its appeal of your order dismissing its protest. The stipulation between the parties did not contemplate a new or "amended" protest being filed by Boulder County in

¹ Also, Rule 509.a.(3)E., provides that a protest must include "a certificate of service attesting that the pleading has been served, at least 14 business days prior to the first hearing date on the matter, on the applicant" (emphasis added).

Docket No. 171000695. However, even if this was contemplated by the parties (which, according to 8 North, it unequivocally was not), Boulder County's protest in Docket No. 171000695 was filed eight days after the date by which Boulder County was ordered to file an amended protest in Docket No. 171200774. 8 North further argued that when an application has been properly noticed and is subsequently continued as a result of a protest or by request of the applicant, it does not extend the protest deadline to interested parties or local governments. 8 North objects to Boulder County's protest filed in Docket No. 171000695 as untimely, as it was filed over five months after the protest deadline set forth in the Notice of Hearing issued by the COGCC, and eight days after the deadline the Hearing Officer set for an amended protest to be filed in Docket No. 171200774 (apart from the fact that Boulder County was only granted leave to file an amended protest in Docket No. 171200774).

18. Boulder County argued that the hearing on this application has been continued to the Commission's April 30 - May 2, 2018 hearing, and that Commission Rule 509.a.(1) requires that a protest be filed 14 days prior to the hearing date.

19. Boulder County also argued that the Colorado Rules of Civil Procedure apply. Further, Boulder County argued that pursuant to *Davis v. Paolino and the Colorado Dept. of Corrections*, 21 P.3d 870, 873, it could amend its original protest as a matter of right.

20. As noted above, Commission Rule 519.c., provides that the Colorado Rules of Civil Procedure are applicable to Commission proceedings *unless they are inconsistent with Commission Rules*. (emphasis added).

21. Boulder County admitted at oral argument that no second amended application has been filed since the notice in this case was issued and that it had no agreement with 8 North to file an amended protest in this Docket No. 171000695, as it did for the related Docket No. 171200774.

22. Boulder County ignores the provisions of Commission Rule 506.c. The Colorado Rules of Civil Procedure are inconsistent with Commission Rule 506.c., and therefore, the Colorado Rules of Civil Procedure, and case law interpreting those rules, are not applicable to the Second Protest. Because Boulder County did not file the Second Protest in accordance with the deadline established by Commission Rule 506.c., and Boulder County did not obtain Hearing Officer leave to file an amended protest, the Second Protest should be stricken.

Therefore it is hereby:

ORDERED that the March 30, 2018, Boulder County *Protest and Intervention Filed by Boulder County* is hereby STRICKEN from the record.

Dated: April 11, 2018

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO


James P. Rouse, Hearing Officer

CERTIFICATE OF SERVICE

On April 11, 2018, a true and correct copy of the foregoing *Order Striking Second Protest Filed by Boulder County* was sent by electronic mail to the following:

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James P. Rouse, Hearing Officer