ORDER ON MOTION REQUESTING CERTAIN DEADLINES FOR ECONOMIC, COST BENEFIT, AND REGULATORY ANALYSES AND RESPONSES

REGARDING REVISIONS TO REGULATION NUMBERS 3, 6 AND 7 (FEBRUARY 19-21, 2014 HEARING)

This matter comes before the Hearing Officer on a December 20, 2013 motion requesting certain deadlines for economic, cost benefit, and regulatory analyses and responses by Bill Barrett Corporation, Black Hills Exploration and Production, Bonanza Creek Energy, Inc., PDC Energy, Inc., Whiting Oil and Gas Corporation, Colorado Petroleum Association, Colorado Oil and Gas Association, Chevron, U.S.A., Inc., Chevron Midcontinent, L.P., and Four Star Oil and Gas Company (hereinafter "Movants"). The Hearing Officer, having considered this motion, and having been otherwise fully informed in the premises, hereby DENIES this motion in part and GRANTS this motion in part based on the following:

- 1. The Movants seek an order requiring that all economic, cost-benefit and regulatory impact analyses be provided by the Air Pollution Control Division to the Commission and the parties by no later than January 30, 2014, the date by which the Commission previously ordered the Division to submit its final economic impact analysis. Citing an "already expedited schedule" and concerns for minimum due process, the Movants seek to expedite the analyses as well as an opportunity to respond in writing.
- 2. The Administrative Procedures Act establishes due process for the public during rulemaking by State agencies, though the Air Pollution Prevention and Control Act establishes certain additional requirements. The APA requires agencies to provide a minimum of twenty days' notice of a rulemaking hearing during which the analyses in question are intended to be requested and prepared. Notably, the Air Pollution Prevention and Control Act affords the public a minimum of 60 days' notice of any rulemaking. C.R.S. §25-7-110(1). Here, the Commission approved this rulemaking process on November 21, 2013, notice of the rulemaking was posted on the Commission website on November 25, 2013 and that same notice was published in the Colorado Register on December 10, 2013. So Movants will have received at least 71 days' notice of the hearing for this rulemaking. By APA standards, this rulemaking process is hardly expedited.

- 3. The APA requires the Division to prepare and submit a cost-benefit analysis if requested by any person within 5 days after publication of the rulemaking notice and if required by the Department of Regulatory Agencies ("DORA"). If so required, such analysis must be done at least ten days before the hearing on the proposed rules. C.R.S. §24-4-103(2.5)(a).
- 4. The APA further requires the Division to prepare and submit a regulatory analysis upon request of any person, in which event such analysis shall be prepared and made available to the public at least five days before hearing on the proposed rule. C.R.S. §24-4-103(4.5)(c).
- 5. Here, timely requests for cost-benefit and regulatory analyses were received on December 13, 2013 and, on January 3, 2014, DORA required a cost-benefit analysis. Thus, the Division must submit the cost-benefit analysis by no later than February 7th. The Division is also required to prepare and submit the regulatory analysis by no later than Friday, February 14, 2014. Under the schedule set forth in the APA, the Division has 58 days to prepare the cost-benefit analysis and 63 days to prepare the regulatory analysis. Under Movants' proposal, the Division would have 48 days to prepare both analyses.
- 6. Movants suggest the Division should be afforded less time to prepare these analyses than usual, in favor of affording more time to the parties to review and prepare written comment on the analyses. Yet the APA places the burden on the Division to prepare each analysis, expressly allocating most of the notice period to the Division for the purpose of preparing such analyses. The APA is silent with respect to any interested person's right to respond to either analysis, though it is reasonable to assume that the Legislature anticipated interested persons will review and potentially comment on such analyses.
- 7. Under the existing schedule, Movants will have 12 days in which to evaluate and prepare comment on the cost-benefit analysis and 5 days in which to do the same for the regulatory analysis before presenting their comment on February 20th and 21st. This schedule comports with the procedures set forth in the APA for all rulemakings, simple and complex, and therefore satisfies minimum due process requirements.

THEREFORE, it is hereby ORDERED that the Movants' request to modify the deadline for the regulatory analysis and the cost-benefit analysis is hereby DENIED. The Division is encouraged to prepare and make available to the public its analyses at the earliest possible date. The Movants' request for the opportunity to submit a written response or rebuttal to any economic, cost-benefit, or regulatory impact analyses into the record at or prior to the rulemaking hearing, regardless of when the Division serves its APA analysis on the parties, is GRANTED. Any party desiring to offer comment on the analyses is encouraged to do so in writing and as soon as possible. The Commission will accept written and oral comment on these analyses at the hearing.

John Loewy, Chair and Hearing Officer Colorado Air Quality Control Commission

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **Order on Motion Requesting Certain Deadlines for Economic, Cost Benefit, and Regulatory Analyses and Responses** upon all parties herein by e-mail or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 7th day of January, 2014, addressed as follows:

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