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

IN THE MATTER OF THE PROMULGATION AND ESTABLISHMENT OF FIELD RULES TO GOVERN OPERATIONS IN THE MAMM CREEK FIELD, GARFIELD COUNTY, COLORADO	CAUSE NO. 191 DOCKET NO: 1101-SP-02

MOTION TO DISMISS

Antero Resources Piceance Corporation ("Antero"), by and through its undersigned attorneys, moves to dismiss the late and improper Motion to Intervene filed in the captioned matter by Garfield County ("the county"). As grounds therefore, Antero states:

THE COUNTY'S MOTION IS UNTIMELY:

1. This matter was originally docketed for the November 29-30, 2010 hearing. The period for the timely filing of protests and motions for intervention expired ten business days prior to the date of the hearing, on November 12, 2010. Rule 509.a(1). The county's motion to intervene was filed on December 22, 2010, more than a month late.

2. Due to the large number of applications received for hearing in November, 2010, the Hearing Manager *sua sponte* rescheduled twelve applications for the January 13-14, 2011 hearing. One of the applications continued to the January 2011 hearing was this matter.

3. While Rule 506.c provides that the Commission may continue a matter if it believes that it will not have sufficient time to hear the matter, it specifically states that "[a]ny 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." Neither of these exceptions has occurred in this case: the Antero application has not been amended, nor did the Commission otherwise extend the filing deadline for protests or motions for intervention.

4. Rule 509.a(1) is in accord. It states: "The protest or intervention shall be filed with the Secretary, and served on the applicant and its counsel at least ten (10) business days *prior to the first hearing date* on the matter" (emphasis supplied). Nor can the county allege that it was unaware of the intervention date for this matter, as it timely filed its similar intervention in a companion docket (1010-SP-37) which it now seeks to consolidate with this matter.

5. The Administrative Procedure Act provides that agency proceedings are to be conducted in accordance with due process and expedited so that no party will be substantially prejudiced thereby." *Weiss v. Dept. of Public Safety, Colorado State Patrol*, 847 P.2d 197, 199 (Colo.App. 1992). In this matter, it would be manifestly unfair to Antero for a rescheduling by the Commission for its own convenience to result in the re-opening of an expired time period for protests and interventions in opposition.

6. The Colorado Courts treat the continuance of trial dates similarly. When a continuance is not related to discovery issues, the postponement of the trial does not create a parallel extension of discovery or other court ordered deadlines. *Todd v. Bear Valley Village Apartments*, 980 P.2d 973, 977 (Colo. 1999).

Accordingly, the county's motion to intervene is untimely and should be dismissed.

THE COUNTY'S MOTION IS IMPROPER:

7. The county's motion to intervene in the captioned matter parallels the motion to intervene it filed on November 12, 2010, in the companion docket. A prehearing conference was conducted in the companion docket on November 23, 2010. The prehearing conference report and order that issued thereafter informed the county that its motion to intervene was not a proper pleading under Rule 509.a(2): "Garfield County shall have the burden to supplement its pleading to state with particularity ... [p]otential impacts that are not adequately addressed by the rules and regulations of the Commission." Subsequently, on December 3, the county filed an "Amended Motion" that was, in substance, virtually identical to its original motion, and which failed to comply with the preconference order. Another prehearing conference was then conducted on December 15, after which the county was provided with a second opportunity to amend its pleading by identifying "specific Commission Rules alleged to be inadequate for protection of public health, safety, welfare and the environment with regard to Antero's Application," including "specific adverse impacts ...resulting from the proposed well pad and downhole density the County alleges are not adequately covered by any existing Commission Rule."

8. Despite these clear, express directives from the Hearing Officers with respect to a proper pleading, the county has filed a motion to intervene in this matter that, in form and substance, is virtually identical to its original, defective pleading in the companion docket. Notably, the county's motion in this matter fails to identify a single commission rule that it alleges to be inadequate to protect public welfare or the environment with respect to the drilling unit and well density applied for by Antero. Having been put on notice – twice – in the companion docket that this motion is not a proper pleading, the county's submission verges on contempt of the Commission.

9. On December 14, 2010, Antero filed a Response to Amended Motion in the companion docket that describes in detail the insufficiency and improper nature of the county's motion. Antero requests that the Hearing Officer and the Commission take administrative notice of said Response in this matter, as it is equally applicable hereto.

Accordingly, the county's motion to intervene is insufficient and improper and should be dismissed.

Antero notes that the county has filed motions to hear this matter in Garfield County, for a site visit, and to consolidate this matter with the companion docket. If the Commission grants Antero's Motion to Dismiss, these related motions will be moot. However, Antero informs the Commission that it opposes all of these related motions and reserves its right to contest them should the Commission fail to dismiss the county's motion to intervene.

DATED: December 30, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of January, 2011, a true and correct copy of the foregoing Motion to Dismiss was delivered via U.S. mail to the following:

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