RECEIVED
DEC 14 2010
COGCC

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: 1010-SP-37

ORIGINAL

RESPONSE TO AMENDED MOTION OF BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO FOR INTERVENTION UNDER COGCC RULE 509(a)

On September 1, 2010, Antero Resources Piceance Corporation ("Antero") filed an application which is now the referenced docket. This application seeks to establish a drilling and spacing unit for the Williams Fork and Iles Formations comprised of the following lands:

Township 5 South, Range 91 West, 6th P.M.
Section 31: All
Garfield County, Colorado

In addition to creating this approximately 640 acre drilling and spacing unit, the application seeks to establish *optional 10-acre bottom hole well density* which shall be allowed to be drilled from a theoretical maximum of *no more than one* well pad per 40 acres ("the Application").

On November 12, 2010, Garfield County filed a MOTION OF BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO FOR INTERVENTION UNDER COGCC RULE 509(a) based on issues related to public health, safety, welfare and the environment ("the Original Motion"). On November 23, 2010, a prehearing conference was held in this matter and was attended by representative from the COGCC, Antero and Garfield County, Colorado. The result of this conference was the issuance of a Prehearing Conference Report ("the Report"). Among other things, The Report provided that Garfield County file a supplemental pleading to the COGCC by December 3, 2010 which addressed the following:

> Garfield County shall have the burden under Rule 509.a(2) to supplement its pleading to *state with particularity*:
>
> 1. Issues raised by the application that are reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy;

2. Potential impacts that are not adequately addressed by the application; and
3. Potential impacts that are not adequately addressed by the rules and regulations of the Commission.

(emphasis supplied)

On December 3, 2010, Garfield County submitted an AMENDED MOTION OF BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO FOR INTERVENTION UNDER COGCC RULE 509(a). Antero, upon review of the Amended Motion, asserts that Garfield County has failed to supplement its pleading (Original Motion) as required by the Report. In support of this assertion, Antero would like to call attention to the following:

1. As was prevalent in the Original Motion, the Amended Motion continues to mischaracterize the Application as "proposing surface locations of one per quarter quarter section" (Amended Motion at I.H). This is incorrect. The Application seeks to authorize *no more than* one multi-well pad per 40 acres (quarter quarter section). The theoretical pad maximum, as stated in the Application, has been included in all recent applications in Garfield County and was added at the request of Garfield County. It was never intended to be construed as a drilling plan or development proposal as the county now asserts. Approval of the Application does not grant to Antero any vested right to construct or utilize a road or well pad anywhere on the Application lands. On the contrary, Antero is forbidden to construct actual surface locations for the proposed drilling unit prior to applying for the Commission's Oil and Gas Location Assessment ("OGLA") and receiving an approved Form 2A. The county is aware of this process and knows that it has standing to force a hearing on the location of a well pad. This has been repeatedly brought to their attention through the rule making process, past applications and by the county's oil and gas liaison. It has been further explained by the COGCC's letter to the Board of Commissioners, dated November 8, 2010 which states: the OGLA enables "the COGCC to monitor the extent of surface disturbance and the number and location of certain equipment components, which should improve the COGCC's ability to assess the cumulative impacts associated with oil and gas development" (quoting from the Statement of Basis, Specific Statutory Authority and Purpose for Rule 303).

2. The Amended Motion fails to state with any specificity or particularity, the basis behind how or why the county has chosen to intervene in this Application. The intent of the Application is to promote efficient underground recovery of the resource. It seeks to establish a legal basis for flexibility in locating wells, well pads and other facilities in order to promote efficient and economic reservoir drainage, address specific topographic issues and facilitate optimal well bottom hole placement. The Original Motion discussed general issues raised by the application that are reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources. The Report requested

specifics on those "issues" and the county has failed to provide any in its Amended Motion.

3. Furthermore, the Amended Motion continues to misstate the allocation of the burden of proof in this matter. It states, "It is the responsibility of the applicant to analyze all of the foregoing public health, safety and welfare and environmental issues and propose adequate mitigation including any limitations on the number of wells to be drilled, locations of well sites ...." (Amended Motion at II.I). No rule is cited for this proposition.

   Moreover, this assertion blatantly disregards the burden of proof as established by the COGCC in the Report. The COGCC's November letter – recited above – explains that these sorts of issues are properly addressed in the context of an OGLA, not with respect to establishing well density and spacing. In this regard, the Commission Rules state:

   > The rules and regulations of the Commission as they are applied to oil and gas operations are expected to adequately address impacts to public health, safety and welfare, including the environment and wildlife resources, which may be raised by an application for increased well density. Rule 508.b(1).

4. It is incumbent on the county, and required by the Report, that it "state with particularity ... potential impacts that are not adequately addressed by the rules and regulations of the Commission." The Amended Motion makes no attempt whatsoever in this regard. Indeed, no rule of the commission is even referenced. Instead, the Amended Motion states, as a general proposition the opposite of Rule 508.b(1): "these potential impacts ... are not specifically addressed by the COGCC's rules and regulations" (Amended Motion at II.B).

   In any case, it should never be the job of the regulated to prove that the regulator's rules are adequate. Therefore, it is not the responsibility of Antero to prove that the Commission's rules are adequate. At the prehearing conference, the hearing officer made it clear to the county's attorney that it would have the burden of proof to establish the validity of the alleged impacts and that "Garfield County will present its case first in part two (the non-technical portion) of the hearing." Despite this admonition, the Amended Motion states that "Intervenor may elect to call no witnesses or present no exhibits." Should the county make such an election, its intervention should be summarily dismissed. Moreover, it is manifestly unfair to Antero to require it to prepare a rebuttal case to an intervention that fails to address specifics and contemplates witnesses who may or may not be called and exhibits that may or may not be presented.

5. To the extent that the county argues that the COGCC rules and regulations are inadequate, Antero's Community Development Plan addresses all of the alleged impacts asserted in the Amended Motion. Just as it has ignored the requirement to

identify alleged deficiencies in the COGCC rules and regulations, the Amended Motion makes no attempt to "state with particularity" any inadequacies in the Community Development Plan. The Amended Motion is virtually identical to the original pleading with respect to the "Factual and Legal Basis for Intervention." The Amended Motion fails to state with particularity any asserted facts relating to alleged adverse impacts. It continues to rely on vague, general allegations that the Application "may result in ... potentially severe and long-lasting water quality and air quality contamination resulting from potentially severe dust, odor, noise impacts" (emphasis supplied). If the county truly intends to prove that odors cause water contamination or that noise affects water and air quality, the basis for this argument needs to be specified.

6. Regardless of the county's failure to address any specifics in the reasons for its intervention, the COGCC has written, established and enforced a plethora of relevant and proven rules and regulations which address and protect all of the general issues raised in the Amended Motion. A few of these are:

Water quality is protected by:

- Blowout prevention equipment - 317.a;
- Casing program to protect hydrocarbon horizons and ground water – 317.d;
- Surface and intermediate casing cementing – 317.h;
- Production casing cementing – 317.i;
- Production casing pressure testing – 317.j;
- Protection of aquifers ... before running production casing – 317.k
- Requirement to log well (cement bond log) – 317.o
- Public water system protection – 317B;
- Prevention of pollution; compliance with state water quality standards – 324A.b
- Bradenhead monitoring during well stimulation operations - 341;
- E&P waste management, pits, spills and releases, remediation – 900 Series;
- Stormwater management – 1002.f.

Air quality is protected by:

- Prevention of pollution; compliance with state air regulations and permits – 324A.c;
- Odor and dust control (including special provisions for Garfield County) - 805

Noise impacts are controlled by:

- Noise abatement requirements (including noise limits) – Rule 802

"Scarring of the terrain" is addressed by:

- Drill pad location standards – 1002.d;
- Surface disturbance minimization requirements – 1002.e;
- Access road requirements – 1002.e(4);
- Interim reclamation requirements – 1003;
- Final reclamation requirements – 1004.

7. Moreover, Antero has adopted a "Community Development Plan" which further guides the development in the Application area in order to further limit impacts above and beyond what is required by the COGCC through:

   - Clustered development well pad spacing;
   - Managing development in sensitive areas to limit noise, safety, traffic and visual impacts;
   - Continuity of development to minimize the duration of impacts;
   - Best management practices, including, but not limited to:
     - Centralized water management to reduce truck hauling;
     - Weed control;
     - Reduced flaring, odor control;
     - Pitless drilling;
     - Water quality testing before and after drilling;
     - Graveled pads to reduce mud and dust;
     - Green frac methods when practical.
   - Monitoring during drilling operations;
   - Planning for traffic management, including cost mitigation to towns and the county for road upgrades and road damage.

   (the above is a partial summary)

8. Finally, the Amended Motion identifies 22 citizen "witnesses" for the purpose of presenting their "opinion[s] concerning impacts of greatly increased natural gas drilling in close proximity to [their] residence." As an initial matter, the "opinion" of lay witnesses who simply object to nearby oil and gas development is not competent evidence in an adjudicatory proceeding requiring technical evidence. Second, with the exception of Ms. Strudley and Ms. Schmidt, none of the proposed witnesses live in or adjacent to the drilling unit proposed by the Application and none of these witnesses live within 2,000 feet of the single existing well pad, let alone within the 500 feet required for notification. No location in this unit has been established as a "high density area" location under the COGCC rules. Any pad, built or contemplated, is currently accompanied by a signed surface use agreement and additionally only one well has been drilled to date. The Hearing Officer should disqualify each of these witnesses from providing testimony at the hearing on this matter, except as such citizens desire to make a Rule 510 statement in support of the county's case or the county shall establish how they qualify as a technical expert in this hearing, should it go forward.

Antero respectfully requests that the Commission officers require the county to identify the specific issues which will be addressed at hearing, and otherwise comply with the Report, by Friday, December 17, 2010 or dismiss the intervention due to its lack of factual basis.

Respectfully submitted this 14th day of December, 2010.

BEATTY & WOZNIAK, P.C.

By: Kenneth A. Wonstolen

William A. Keefe
Kenneth A. Wonstolen
216 Sixteenth Street, Suite 1100
Denver, Colorado 80202-5155
303-407-4499

ATTORNEYS FOR ANTERO RESOURCES PICEANCE CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of December, 2010, a true and correct copy of the foregoing RESPONSE TO AMENDED MOTION OF BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO FOR INTERVENTION UNDER COGCC RULE 509(a) was delivered via U.S. mail to the following:

Rob Willis, Acting Hearings Manager
Colorado Oil & Gas
Conservation Commission
1120 Lincoln St., Suite 801
Denver, CO 80203

Cassandra Coleman
Garfield County Attorney
108 8th St., Suite 219
Glenwood Springs, CO 81601