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Colorado Oil & Gas Conservation Commission  
Attn: Matt Lepore, Director  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203

September 7, 2012

Dear Director Lepore:

Noble Energy, Inc. (“Noble”) submits these comments to the Colorado Oil and Gas Conservation Commission (“Commission”) as follow up to the stakeholder process and in advance of the anticipated setback rulemaking. Noble seeks to work with the Commission and stakeholders to create policies that fairly and effectively address the issues and impacts associated with well drilling activities near occupied structures and urban areas. However, Noble opposes the anticipated setback rulemaking as well as any increase to setback distances as currently codified in rules and/or statutes. An increase in setback distances will cause direct and quantifiable harm to well-settled economic, property, and contract interests held by Noble, Noble’s lessors, surface owners, and other stakeholders in contravention of the Commission’s obligation to protect “public and private interests against waste in the production and utilization of oil and gas . . . .” C.R.S. 34-60-102.

Noble recognizes that the Commission has dual obligations, and must likewise “foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare . . . .” *Id.* However, seven months of stakeholder meetings have shown no historical deficiency in existing setback rules nor revealed any scientific evidence that could serve as a basis for rulemaking or increased setback distances. As currently positioned, the setback rulemaking can be conducted with neither precision nor objectivity. Any resulting revision in setback distance will be largely arbitrary, resulting from political motivations and unsubstantiated agenda-driven information, rather than from evidence-based analysis and thoughtful decision making.

As an alternative to a rulemaking on setbacks, Noble recommends a policy-based alternative. This alternative will respect well-settled property rights and expectations, balance the Commission’s dual obligations to develop Colorado’s hydrocarbon resources and protect the

public, and ultimately achieve the goals sought by the setback stakeholder process. Noble understands that drilling activities in high density areas can create land use conflicts. This policy-based alternative that will enable an operator to work collaboratively with the Commission and the Local Government Designee (“LGD”) to alleviate and/or eliminate conflicts or issues that may arise when development occurs in or around high density areas and/or occupied structures.<sup>1</sup>

**A. Noble opposes this rulemaking because an adequate basis for rulemaking has not been established.**

Noble opposes this rulemaking because the stakeholder process has failed to prove a legitimate basis to amend existing setback rules. Despite seven months of meetings and discussions, the stakeholder process has identified no historical, technical, or scientific reason to support why the existing 150-foot setback distance in Rule 603.a. or the 350-foot setback distance in Rule 603.e. are outdated, inadequate, or unsafe.

Likewise, the stakeholder process has not shown a scientific basis for increasing setbacks in urban areas, or as Noble understands, potentially statewide. Increased setback distance has been identified as a cure-all for, among other things, perceived noise, odor, light, and air quality issues associated with drilling operations. This is based on the assumption that operations placed at a greater distance from people will have less impact than operations placed a lesser distance from people. However, this is where the “scientific” analysis has stopped. A majority of the conflicts identified by the stakeholder process can be measured or quantified and therefore reduced to certain acceptable levels using site specific mitigation designed with input from the surface owner and the LGD. Thus, it seems that the equitable way to approach a setback discussion is to identify a given issue and analyze the incremental reductions that would occur as drilling operations are placed further and further away. This approach would enable the Commission to define an objective equilibrium, between reducing the surface conflict and protecting the value of the resource, and thereby achieve both of its legislative mandates.

Instead, various stakeholders have merely identified a laundry list of objectionable effects from oil and gas operations and flatly stated that increased setbacks will reduce or eliminate them. However, to justify the inevitable waste of hydrocarbons and the concurrent infringement upon the rights of operators, mineral owners, and lessors that setback increase will cause at a minimum, the evidence must prove that increased setbacks will address or alleviate the identified impacts of oil and gas operations in a demonstrable and quantifiable way.

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<sup>1</sup> In fact, Noble has historically and will continue to endeavor to maximize setbacks when conducting drilling operations near occupied structures whenever possible with valuable input and consideration from the surface owner and, if applicable, the LGD. Noble understands that drilling operations in high density areas can create impacts that can largely be alleviated through site specific mitigation measures, including but not limited to, increased setbacks, screening of operations areas to reduce visual and noise impacts, control of fugitive dust on operations areas and access roads, scheduling and limiting hours of operations to the maximum extent possible and employing and deploying best in class drilling and completion tools for reduced emissions, closed loop or “pitless” drilling systems. Noble does not oppose the use of increased setback distance as a tool to mitigate impacts when it is effective and efficient. For further discussion of Noble’s alternative proposal, see *infra*.

Although operators have directional and horizontal drilling technologies available, a rule increasing setback distance would essentially be a *de facto* requirement prohibiting vertical drilling in affected areas. While recovery of hydrocarbons might be technically possible using these technologies, the recovery method must likewise be effective and economic for an operator to proceed with operations. If only directional or horizontal methods can be used to access a given reserve, there will be cases where those hydrocarbons go undeveloped and will be wasted.

Noble recognizes that drilling operations, like other industrial surface operations, can create impacts and effects upon those who live, work, or recreate nearby. However, unsubstantiated setback increase will affect long-settled rights and will damage Noble, its lessors, and other similarly situated individuals. It is speculative at best that an increase in setback distance alone will alleviate the issues—it is all but certain that an increase in setback distance will be extremely damaging and detrimental to Noble and other stakeholders.

**B. Noble opposes any codified increase in the distance or scope of application of Rule 603 and proposes a policy-based alternative.**

**1. Noble opposes an increase in setback distances and/or scope of application of setback distances that is codified in rules or statutes.**

Noble opposes an increase in 150-foot setback distance established by Rule 603.a. and the 350/500-foot wellhead/tank battery setbacks established by Rule 603.e.(2). Noble also opposes any increase in the scope of application of the 350-foot wellhead setback to additional building types beyond the seven building types enumerated in Rule 603.e.(2)., and opposes any increase in the geographic scope of the application of the 350-foot wellhead setback rule beyond the “high density” and “designated outside activity areas” as provided by Rule 603.e. and defined in the 100 Series of the Commission Rules.

The stakeholder process has identified no evidentiary basis to show that increased setback distance will wholly or incrementally eliminate the identified land use conflicts. An increase in setback distance will upset settled property rights and expectations and ultimately will reduce the recovery of hydrocarbons in the State of Colorado. Any change to existing setbacks must be justified on the basis of sound, peer reviewed, science, and not based on preliminary research.

An increase in setbacks will also upset business planning and investment behavior in the State. Operators, such as Noble, plan development projects over the course of several years and invest substantial resources in a given area prior to developing even a single well. Operators verify the geologic quality of a given area, purchase acreage, negotiate with surface owners, engage in both State and Federal regulatory analysis, and utilize untold numbers of contractors, businesses, and other support businesses to achieve their development goals. This investment occurs based on a then-existing situation and is designed to achieve maximum efficiency—both in terms of financial expenditure and the scope and intensity of the land use. An increase in setback distances will upset the settled expectations of operators, mineral owners, and surface owners, and will negatively impact the value of all areas affected. This phenomenon will affect not only oil and gas operators, but also agriculture, homebuilders, and others (including the very residents of the occupied structures) who rely upon land development for income. While

numerous after-the-fact events routinely occur that affect investment value, the direct and immediate devaluation of property that an increase in setback distance will cause cannot be understated.

Finally, a rulemaking based on speculation, as opposed to objective scientific evidence, places Noble and other stakeholders at an analytical disadvantage because it reduces the rulemaking to an arbitrary guessing game because there is no evidentiary baseline from which to start. For example, if stakeholders were to argue that for each 50-foot increase in the setback distance a given surface conflict would be reduced by five percent, Noble could analyze the data and present countervailing evidence that these same reductions could be achieved in increments of, for example, 10 feet. However, without any demonstrable evidence to support the stakeholders' claims, Noble, its lessors, and other similarly situated stakeholders are in the unenviable position of "proving the negative."

## **2. Noble recommends a policy-based approach to resolving the issues identified in the stakeholder process.**

As an alternative to increased setback distance codified in rules or statutes, Noble recommends a policy based approach. Under this approach, the Commission would establish a defined set of best management practices ("BMPs") that would be available for implementation by the Commission when oil and gas development is located within a certain distance of structures and/or is located in certain areas. This "menu" of BMPs would be approved by the Commission via the Form 2A process with input from the operator, surface owner and LGD.<sup>2</sup>

Flexible and site specific, this program would enable the operator, surface owner, the Commission, and the LGD to identify surface conflicts or other issues caused by the proximity of oil and gas development to various surface structures and discuss what BMPs could most effectively address these issues. The Commission's selection of BMPs would be influenced by the following factors, including but not limited to: leasehold rights, surface use agreements or other contractual issues, geologic and or engineering issues, concerns raised by the LGD, and effectiveness and the site specific appropriateness of a given BMP. As one of the available BMPs, the Commission could include, in appropriate circumstances, increased setback distance. Using this approach, parties could proactively identify best practices to mitigate or eliminate surface issues and seek inclusion of these BMPs in an operator's Form 2A.

Noble is not suggesting that these BMPs be codified or required. A blanket application of management practices defeats the flexibility needed to resolve surface use conflicts in a way that is efficient and compatible with operations. For example, while dust suppression may be a necessary and important BMP in certain areas, in other areas, dust suppression may be an unnecessary expense that could be better utilized in some other mitigation capacity. BMPs must

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<sup>2</sup> Noble also notes that some operators and local governments have chosen to enter into Memorandums of Understanding ("MOUs") to establish and clarify the respective rights, obligations, and expectations of the operators and the local government. In some cases, a MOU could be used in conjunction with this policy-based approach to clarify expectations between the LGD and the operator, and pre-identify potential BMPs that may be used to mitigate impacts from drilling and development operations.

be flexible to best account for geographic characteristics, the character of the development at that particular well, and the needs those who live nearby.

**C. Assuming a rulemaking occurs to increase setback distances, the ultimate rule must be based on objective, peer-reviewed science and must include a provision that setbacks are waived when individuals “come to the well.”**

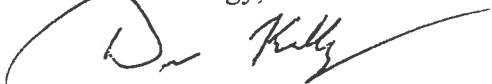
If the setback rulemaking is commenced, the distance of the resulting setbacks must be shown to achieve the goals sought with objective, peer reviewed science. This will ensure that the rule strikes the appropriate balance between public protection and the prevention of waste. The rule must include an exception location procedure to ensure that development can be accommodated when surface or subsurface conditions do not permit development within the established setback. And finally, if setbacks are changed, there must be concurrent change within local ordinances to ensure that when individuals who “come to the well”, the Commission setbacks are fully waived.

Given the scope and complexity of the issues described above, appropriate consideration cannot be achieved on an accelerated rulemaking schedule. Noble requests that the Commission act deliberately, demand evidentiary support for all aspects of the rulemaking, and comprehensively analyze all consequences, both intended and unintended, that may occur from an increase in setback distance.

Noble is committed to a continued relationship of close cooperation with the Commission, and seeks to continue its partnership with other stakeholders to come to a sensible, prudent, and equitable solution to the issue of setback distances. Noble appreciates this opportunity to provide input and recommendations on this matter.

Respectfully Submitted,

Noble Energy, Inc.



Dan Kelly

Vice President, Wattenberg Business Unit