

**FINANCIAL ASSURANCE  
700 SERIES**

**701. TYPES OF FINANCIAL ASSURANCE**

- a. Preferred Types of Financial Assurance.** To demonstrate its capacity to perform all of its obligations under the Act and the Commission's Rules, each Operator will provide the Commission with the following types of Financial Assurance:
- (1) A Cash Bond; or
  - (2) A Surety Bond.
- b. Alternative Types of Financial Assurance.** An Operator may request a hearing pursuant to Rule 503.g.(11) to obtain the Commission's approval to provide a type of Financial Assurance explicitly authorized by § 34-60-106(13)(a)–(f), C.R.S.
- (1) **Proving Equivalency.** If an Operator seeks the Commission's approval of a lien, Letter of Credit, security interest, escrow account, sinking fund, Third-Party Trust Fund, or other financial instrument that is not a Cash Bond or Surety Bond, the Operator will prove that the proposed type of Financial Assurance is equivalent to a Cash Bond or Surety Bond.
  - (2) **Self-Bonding Strongly Disfavored.** Unless the Operator is a Local Government, the Commission will presumptively not accept a guarantee of performance based on an Operator's demonstration of sufficient net worth unless the Operator proves, through a personal guarantee of a corporate officer, on an annual basis:
    - A. Audited Financial Statements.** Its current net worth, as demonstrated through financial statements accompanied by an unmodified opinion issued by an independent auditor;
    - B. Conservative Estimate of Net Worth.** That its net worth is greater than 20 times the estimated cost to Plug and Abandon and Reclaim all Oil and Gas Operations in Colorado; and
    - C. Multi-Agency Guarantees Prohibited.** The Operator is not subject to a guarantee of performance based on the same net worth as a form of Financial Assurance provided to any other local, state, tribal, or federal government agency, or to a foreign nation.
- c. Commission's Interest in Active Financial Assurance.**
- (1) **Commission's Expenditure.** All types of Financial Assurance may be expended by the Commission if an Operator fails to perform its obligations under the Act or the Commission's Rules, including its Plugging and Abandonment, Reclamation, and Remediation obligations.
  - (2) **Operator's Contingent Reversionary Interest.** If an Operator fails to fulfill any of its obligations under the Act and the Commission's Rules, the Operator will have no contract or property interest in any type of Financial Assurance other than a contingent reversionary interest in the surplus, if any, which arises:
    - A.** After the Director determines that the Operator has complied with all Plugging and Abandonment, Reclamation, and Remediation obligations pursuant to Rule 706.a; or
    - B.** After a Buying Operator has filed a satisfactory replacement Financial Assurance pursuant to Rule 218.g.(4), and the Director has approved the applicable Form 9, Transfer of Operatorship – Subsequent.

**d. Riders Prohibited.**

- (1) **New Riders.** The Commission will not authorize any new bond riders after April 30, 2022, except:
- A. In the instance of an Operator changing its name without any associated transfer of assets pursuant to Rule 218; or
  - B. As the result of changing the amount of Financial Assurance provided without any associated transfer of assets pursuant to Rule 218.
- (2) **Existing Riders.** Operators whose Financial Assurance is partially or entirely provided through a rider on another Operator's bond as of April 30, 2022 will submit a Financial Assurance Plan for the review and approval or denial in accordance with Rule 702.b, addressing the liability posed by the rider.
- e. **Form 3A, Financial Assurance.** To provide Financial Assurance, update or change Financial Assurance or related information pursuant to the 700 Series Rules, an Operator will file a Form 3A, Financial Assurance, unless a Rule specifies a different form or notice mechanism.

**702. FINANCIAL ASSURANCE FOR PLUGGING, ABANDONMENT, AND RECLAMATION**

- a. **Applicability.** All references to Wells in this Rule 702 include Wells subject to an approved but not yet expired Form 2, Application for Permit to Drill that have not yet been Spud. This Rule 702 applies to every Well and its associated Oil and Gas Location and Oil and Gas Facility, in Colorado, unless the Operator demonstrates that it has already provided or will provide Financial Assurance for the same Well, Oil and Gas Location, or Oil and Gas Facility to the federal government at the time it files a Form 2, Application for Permit to Drill, an Oil and Gas Development Plan, or a Financial Assurance Plan pursuant to this Rule 702. This exception will continue until no later than 90 days after the effective date of any final rule adopted by the U.S. Bureau of Land Management to update the federal bonding requirements found in 43 C.F.R. § 3104, and in no case later than October 15, 2023. Following the expiration of this exception, all Operators with Wells subject to federal bonding requirements will file a revised Financial Assurance Plan pursuant to Rule 702.b.(2) and, based upon the Financial Assurance Option, the Commission or Director will determine whether the financial assurance required by the federal government is substantially equivalent to the Commission's 700 Series and, if not, what additional Financial Assurance is required so long as the additional Financial Assurance does not duplicate financial assurance imposed by the federal government.
- b. **Form 3, Financial Assurance Plan.** Operators of 1 or more Wells will file Financial Assurance Plans as required by this Rule 702.b. Each Financial Assurance Plan will demonstrate how the Operator is financially capable of fulfilling its obligations under the Act and the Commission's Rules.
- (1) **Initial Financial Assurance Plan Submissions.**
- A. **Existing Operators' Deadlines for Initial Financial Assurance Plan Submission.** All Operators of 1 or more Wells with an active Form 1, Registration for Oil and Gas Operations as of April 30, 2022 will submit an initial Financial Assurance Plan according to the following deadlines:
    - i. Operators with 50 or more Wells: July 1, 2022.
    - ii. Operators with greater than 10 but fewer than 50 Wells: October 1, 2022.
    - iii. Operators with 10 or fewer Wells: December 31, 2022.

**B. New Operators.** An Operator of 1 or more Wells that files a new Form 1 after April 30, 2022 will submit an initial Financial Assurance Plan concurrently with its Form 1.

**C. Review of Initial Financial Assurance Plan.**

- i. Director's Review of Initial Financial Assurance Plan.** If an Operator's initial Financial Assurance Plan meets the criteria in Rules 702.d.(1) or (2), or the Operator's initial Financial Assurance Plan provides Single Well Financial Assurance for all Wells and does not request a modification of the presumptive annual contribution pursuant to Rules 702.d.(3) or (4), the Plan will be subject to review by the Director. If the Director denies the initial Financial Assurance Plan, the Operator may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11). Only CDPHE, CPW, or a Relevant Local Government with jurisdiction over Wells subject to the Operator's Financial Assurance Plan may file a petition pursuant to Rule 507 to participate formally as a party in the Financial Assurance hearing.
- ii. Commission's Review of Initial Financial Assurance Plan.** For any submitted initial Financial Assurance Plan that does not qualify for Director review pursuant to Rule 702.b.(1).C.i, the Operator will file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) concurrently with filing its Financial Assurance Plan. Only CDPHE, CPW, or a Relevant Local Government with jurisdiction over Wells subject to the Operator's Financial Assurance Plan may file a petition pursuant to Rule 507 to participate formally as a party in the Financial Assurance hearing.

**(2) Revised Financial Assurance Plans.** An Operator will file a revised Financial Assurance Plan if the Operator believes that a change to its approved Financial Assurance Plan is warranted due to a change in circumstance. Only CDPHE, CPW, or a Relevant Local Government with jurisdiction over Wells subject to the Operator's Financial Assurance Plan may file a petition pursuant to Rule 507 to participate formally as a party in the Financial Assurance hearing.

- A.** If an Operator's revised Financial Assurance Plan meets the criteria in Rules 702.d.(1) or (2), or the Operator's revised Financial Assurance Plan provides Single Well Financial Assurance for all Wells and does not request a modification of the presumptive annual contribution pursuant to Rules 702.d.(3) or (4), the Plan will be subject to review by the Director. If the Director denies the revised Financial Assurance Plan, the Operator may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11).
- B.** For any submitted revised Financial Assurance Plan that does not qualify for Director review pursuant to Rule 702.b.(2).A, the Operator will file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) concurrently with filing its revised Financial Assurance Plan.

**(3) Director's Annual Review.** The Director may require an Operator to file a revised Financial Assurance Plan and file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) based on the Director's annual review pursuant to Rule 707.b.

**c. Financial Assurance Plan Options.** Operators will file a Financial Assurance Plan in accordance with the listed Options. For purposes of any Option that includes a production threshold, the Operator will use the barrels of oil equivalent ("BOE") or and thousand cubic feet of gas equivalent ("MCFE") threshold depending on the aggregate gas-to-oil ratio ("GOR") of the production from all of its Wells. The BOE thresholds apply to Operators with an aggregate GOR equal to or less than 15,000 standard cubic feet ("SCF")/barrels of oil ("BBL"); the MCFE thresholds apply to Operators with an aggregate GOR of greater than 15,000 SCF/BBL.

Aggregate GOR is calculated by dividing the Operator's total gas production (in thousand cubic feet ("MCF")) over the previous 12 months by the Operator's total oil production (in BBL) over the previous 12 months and multiplying by 1,000. Operators will use the conversion factor of 5.8 to convert MCF to BBL and vice versa. For purposes of calculating the average daily per-Well production, the Operator will not include Class II UIC Wells that are not Inactive Wells, Wells used for the purpose of monitoring or observing an oil or gas reservoir, and Stratigraphic Wells.

- (1) **Option 1.** An Operator may file a Financial Assurance Plan that meets the criteria of Rule 702.d.(1) if:

  - A. The Operator's average daily per-Well production exceeds 60 BOE over the previous 12 months; or
  - B. The Operator's average daily per-Well production exceeds 90 MCFE over the previous 12 months.
- (2) **Option 2.** An Operator may file a Financial Assurance Plan that meets the criteria of Rule 702.d.(2) if:

  - A. The Operator's average daily per-Well production exceeds 15 BOE and is less than or equal to 60 BOE over the previous 12 months; or
  - B. The Operator's average daily per-Well production exceeds 22 MCFE and is less than or equal to 90 MCFE over the previous 12 months.
- (3) **Option 3.** An Operator may file a Financial Assurance Plan that meets the criteria of Rule 702.d.(3) if:

  - A. The Operator's average daily per-Well production exceeds 2 BOE and is less than or equal to 15 BOE over the previous 12 months; or
  - B. The Operator's average daily per-Well production exceeds 6 MCFE and is less than or equal to 22 MCFE over the previous 12 months.
- (4) **Option 4.** If an Operator does not meet the criteria in Rules 702.c.(1), (2), (3), or (6), or reports zero production from its oil or gas Wells during the previous 12 months, the Operator will file a Financial Assurance Plan that meets the criteria of Rule 702.d.(4).
- (5) **Option 5.** An Operator may file a Financial Assurance Plan based on individual circumstances that demonstrate the Operator is financially capable of fulfilling all of the obligations imposed by the Act and the Commission's Rules. An Operator may only submit a Financial Assurance Plan that meets the criteria of Rule 702.d.(5) due to circumstances that make it unnecessary or unreasonable for the Operator to submit the Financial Assurance amounts specified in Rules 702.d.(1)–(4), or for other exceptional circumstances.
- (6) **Option 6.** An Option 6 Financial Assurance Plan is subject to regular review every 3 years pursuant to Rule 707.b.(1). An Operator may file a Financial Assurance Plan that meets the criteria of Rule 702.d.(6) if:

  - A. The Operator's average daily per-Well production exceeds 40 BOE or 60 MCFE over the previous 12 months, and the Operator is a public company subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a, et seq.; or

- B. The Operator's average daily per-Well production exceeds 60 BOE or 90 MCFE over the previous 12 months, and the Operator is a private company.
- (7) **Consolidation of Related Operators.** Where a registered Operator owns, holds, or controls 50% or more of one or more other registered Operators, that parent company Operator and its subsidiary Operators may be consolidated, at their discretion, for purposes of determining Financial Plan Option eligibility and applicable amount of required Rule 702 Series Financial Assurance, provided the parent Operator guarantees all Rule 702 Series Financial Assurance obligations for itself and the consolidated subsidiary entities. Consolidation under this Rule will include all of a parent Operator's subsidiary Operators.
- d. **Contents of Financial Assurance Plans.** Financial Assurance Plans will meet the informational criteria listed below.
- (1) **Option 1 Plans.**
- A. **Information Requirements.** An Operator that meets the criteria of Rule 702.c.(1) will file a Financial Assurance Plan that includes the following information to demonstrate it satisfies the criteria for Option 1:
- i. **Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
  - ii. **Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
  - iii. **Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
  - iv. **Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.
  - v. **Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information.
- B. **Financial Assurance Amount.** The amount of Financial Assurance the Operator will provide to the Commission as soon as practicable but no later than 90 days from the Commission's approval of the Financial Assurance Plan, which will be:
- i. **Blanket Financial Assurance Amount (excludes Out of Service Wells).**
    - aa. \$12,000 per Well if the Operator operates less than or equal to 50 Wells;
    - bb. \$10,000 per Well if the Operator operates more than 50 Wells and less than or equal to 150 Wells;
    - cc. \$5,000 per Well if the Operator operates more than 150 Wells and less than or equal to 1,500 Wells;
    - dd. \$3,000 per Well if the Operator operates more than 1,500 Wells and less than or equal to 4,000 Wells; or
    - ee. \$1,500 per Well if the Operator operates more than 4,000 Wells.

ii. **Low Producing, Inactive, or Out of Service Well Financial Assurance.**

- aa. **Low Producing Wells.** The Operator's blanket bond will cover Low Producing Wells up to 10% of the Operator's total number of Wells (excluding Out of Service Wells). The Operator will provide Single Well Financial Assurance for any Low Producing Well that exceeds the 10% threshold.
- bb. **Inactive and Out of Service Wells.** The amount of Financial Assurance required by the Director pursuant to Rules 434.c & d.
- cc. **Transferred Low Producing Wells.** Single Well Financial Assurance for any Low Producing Well that exceeds the threshold set forth in Rule 702.d.(1).B.ii.aa and was subject to a transfer of operatorship approved by the Director pursuant to Rule 218.g.

iii. **Other Financial Assurance.** The amount of Financial Assurance required for:

- aa. Other Oil and Gas Facilities pursuant to Rule 703;
- bb. Surface Owner protection pursuant to Rule 704; and
- cc. Remediation pursuant to Rule 703.b.

C. **Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.

D. **Certification of Financial Capability.** An Operator will provide a Certification of Financial Capability signed by an Operator's corporate officer to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules.

(2) **Option 2 Plans.**

A. **Information Requirements.** An Operator that meets the criteria of Rule 702.c.(2) will file a Financial Assurance Plan that includes the following information to demonstrate it satisfies the criteria for Option 2:

- i. **Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
- ii. **Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
- iii. **Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
- iv. **Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.
- v. **Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information. For each Inactive Well, the Operator will identify the reason for no or low production and the planned date to return to production or plug the Well.

**B. Financial Assurance Amount.** The total amount of Financial Assurance the Operator will provide to the Commission as soon as practicable but no later than 90 days from the Commission's approval of the Financial Assurance Plan, which will be:

**i. Blanket Financial Assurance Amount (excludes Out of Service Wells).**

- aa.** \$18,000 per Well if the Operator operates less than or equal to 50 Wells;
- bb.** \$15,000 per Well if the Operator operates more than 50 Wells and less than or equal to 150 Wells;
- cc.** \$12,000 per Well if the Operator operates more than 150 Wells and less than or equal to 1,500 Wells;
- dd.** \$10,000 per Well if the Operator operates more than 1500 Wells and less than or equal to 4,000 Wells; or
- ee.** \$8,000 per Well if the Operator operates more than 4,000 Wells.

**ii. Low Producing, Inactive, or Out of Service Well Financial Assurance.**

- aa. Low Producing Wells.** The Operator's blanket bond will cover Low Producing Wells up to 5% of the Operator's total number of Wells (excluding Out of Service Wells). The Operator will provide Single Well Financial Assurance for any Low Producing Well that exceeds the 5% threshold.
- bb. Inactive and Out of Service Wells.** The amount of Financial Assurance required by the Director pursuant to Rules 434.c & d.
- cc. Transferred Low Producing Wells.** Single Well Financial Assurance for any Low Producing Well that exceeds the threshold set forth in Rule 702.d.(2).B.ii.aa and was subject to a transfer of operatorship approved by the Director pursuant to Rule 218.g.

**iii. Other Financial Assurance.** The amount of Financial Assurance required for:

- aa.** Other Oil and Gas Facilities pursuant to Rule 703;
- bb.** Surface Owner protection pursuant to Rule 704; and
- cc.** Remediation pursuant to Rule 703.b.

**C. Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.

**D. Certification of Financial Capability.** An Operator will provide a Certification of Financial Capability signed by an Operator's corporate officer to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules.

**(3) Option 3 Plans.**

**A. Information Requirements.** An Operator requesting Commission approval pursuant to Rule 702.c.(3) will file a Financial Assurance Plan that includes the following information to demonstrate it satisfies the criteria for Option 3:

- i. **Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
  - ii. **Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
  - iii. **Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
  - iv. **Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.
  - v. **Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information. For each Inactive Well, the Operator will identify the reason for no or low production and the planned date to return to production or plug the Well.
- B. Financial Assurance Amount.** The total amount of Financial Assurance the Operator will provide to the Commission over time, which will be:
- i. **Wells.** Single Well Financial Assurance for every Well, unless the Commission approves an alternative amount for a transferred Low Producing Well pursuant to Rule 218.g, or the Director approves an alternative amount pursuant to Rule 434.d.
  - ii. **Other Financial Assurance.** The amount of Financial Assurance required for:
    - aa. Other Oil and Gas Facilities pursuant to Rule 703;
    - bb. Surface Owner protection pursuant to Rule 704; and
    - cc. Remediation pursuant to Rule 703.b.
- C. Time to Submit Contributed Financial Assurance.** The contribution amount of the Operator's Contributed Financial Assurance will increase each year as established pursuant to the Operator's Financial Assurance Plan.
- i. The presumptive annual contribution will be 5% of the total amount of Financial Assurance required pursuant to Rule 702.d.(3).B until the Operator's Contributed Financial Assurance meets or exceeds its Financial Assurance amount. The Commission may adjust this timeline based upon considerations of the field life for the Operator's Oil and Gas Operations.
  - ii. **Credit for Completion of Plugging and Abandonment and Reclamation.** The Single Well Financial Assurance amount of any Well for which the Director has approved a Form 6, Subsequent Report of Abandonment will apply towards an Operator's Contributed Financial Assurance amount. If the Operator is claiming credit, the Operator will submit the amount of credit and supporting information on a Form 3A. An Operator may not claim credit for the Plugging and Abandonment and Reclamation of an Out of Service Well on its Plugging List pursuant to Rule 434.d.
  - iii. **Release of Financial Assurance.** Once the Operator's Contributed Financial Assurance meets or exceeds its Financial Assurance amount, the Operator may submit a Form 3A requesting release of the Single Well Financial Assurance for any Well the Operator has fully Plugged and Abandoned and Reclaimed pursuant to Rule 706.a.(4).

**D. Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.

**E. Certification of Financial Capability.** An Operator will provide a Certification of Financial Capability signed by an Operator's corporate officer to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules.

**(4) Option 4 Plans.**

**A. Information Requirements.** An Operator requesting Commission approval pursuant to Rule 702.c.(4) will file a Financial Assurance Plan that includes the following information:

- i. Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
- ii. Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
- iii. Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
- iv. Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.
- v. Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information. For each Inactive Well, the Operator will identify the reason for no or low production and the planned date to return to production or plug the Well.

**B. Financial Assurance Amount.** The total amount of Financial Assurance the Operator will provide to the Commission, over time, which will be:

- i. Wells.** Single Well Financial Assurance for every Well, unless the Commission approves an alternative amount for a transferred Low Producing Well pursuant to Rule 218.g, or the Director approves an alternative amount pursuant to Rule 434.d.
- ii. Other Financial Assurance.** The amount of Financial Assurance required for:
  - aa.** Other Oil and Gas Facilities pursuant to Rule 703;
  - bb.** Surface Owner protection pursuant to Rule 704; and
  - cc.** Remediation pursuant to Rule 703.b.

**C. Time to Submit Total Financial Assurance.** The contribution amount of an Operator's Financial Assurance will increase each year as established pursuant to the Financial Assurance Plan.

- i.** The presumptive amount will be 10% of the total amount of Financial Assurance required pursuant to Rule 702.d.(4).B. The Commission may adjust this timeline considering the field life for the Operator's Oil and Gas Operations.

- ii. **Credit for Completion of Plugging and Abandonment and Reclamation.** The Single Well Financial Assurance amount of any Well for which the Director has approved a Form 6, Subsequent Report of Abandonment will apply towards an Operator's Contributed Financial Assurance amount. If the Operator is claiming credit, the Operator will submit the amount of credit and supporting information on a Form 3A. An Operator may not claim credit for the Plugging and Abandonment and Reclamation of an Out of Service Well on its Plugging List pursuant to Rule 434.d.
  - iii. **Release of Financial Assurance.** Once the Operator's Contributed Financial Assurance meets or exceeds its Financial Assurance amount, the Operator may submit a Form 3A requesting release of the Single Well Financial Assurance for any Well the Operator has fully Plugged and Abandoned and Reclaimed pursuant to Rule 706.a.(4).
- D. Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.
- E. Certification of Financial Capability.** An Operator will provide a Certification of Financial Capability signed by an Operator's corporate officer to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules.
- (5) Option 5 Plans.**
- A. Information Requirements.** An Operator requesting Commission approval pursuant to Rule 702.c.(5) will file a Financial Assurance Plan that includes the following information to demonstrate it satisfies the criteria for Option 5:
- i. **Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
  - ii. **Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
  - iii. **Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
  - iv. **Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.
  - v. **Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information. For each Inactive Well, the Operator will identify the reason for no or low production and the planned date to return to production or plug the Well.
  - vi. **Consideration of Low Producing Wells.** A calculation of the Financial Assurance that would be required for the Operator's Low Producing Wells if the Operator pursued a Financial Assurance Plan based on its average daily per-Well production consistent with the applicable Option from Rules 702.c.(1)–(4).

- B. Financial Assurance Amount.** The amount of Financial Assurance the Operator will provide to the Commission as soon as practicable but no later than within 90 days of the Commission's approval of the Financial Assurance Plan and the Operator's justification for not pursuing a Financial Assurance Plan based on the criteria in Rules 702.c.(1)–(4). The plan will specify the amount of Financial Assurance for:
- i. **Wells.** The amount of Financial Assurance based on Well status and designation, and under what circumstances the Director will collect Single Well Financial Assurance for future Low Producing Wells.
  - ii. **Out of Service Wells.** The amount of Financial Assurance required by the Director pursuant to Rule 434.d.
  - iii. **Transferred Low Producing Wells.** Single Well Financial Assurance for any Low Producing Well as set forth in Rule 702.d.(5).B.i that was subject to a transfer of operatorship approved by the Director pursuant to Rule 218.g.
  - iv. **Other Financial Assurance.** The amount of Financial Assurance required for:
    - aa. Other Oil and Gas Facilities pursuant to Rule 703;
    - bb. Surface Owner protection pursuant to Rule 704; and
    - cc. Remediation pursuant to Rule 703.b.
- C. Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.
- D. Certification of Financial Capability and Unmodified Opinion.** An Operator will provide a Certification of Financial Capability to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules. The Certification will be signed by an Operator's corporate officer and will include its current net worth, as demonstrated through financial statements accompanied by an unmodified opinion issued by an independent auditor.

**(6) Option 6 Plans.**

- A. Information Requirements.** An Operator that meets the criteria of Rule 702.c.(6) will file a Financial Assurance Plan that includes the following information to demonstrate it satisfies the criteria for Option 6:
- i. **Production Data.** The total MCF and BBLs reported during the previous 12 months and the Operator's calculated GOR.
  - ii. **Well Status and Designation Data.** A summary table accounting for all Wells, including the number of Wells that falls within each operational status and designation, as of the date the Financial Assurance Plan is submitted.
  - iii. **Well Plugging Data.** The number of Wells Plugged and Abandoned by the Operator during each of the previous three years.
  - iv. **Inactive Well List.** A list of all the Operator's Inactive Wells that includes the name, number, API number, status, reason for no or low production, and planned date for return to production or plug each Well.

- v. **Asset Retirement Planning.** A demonstration of how the Operator is planning for the retirement of its Oil and Gas Operations based on the projected life of the field, age of the infrastructure, Out of Service, Inactive, and Low Producing Wells, and related information. For each Inactive Well, the Operator will identify the reason for no or low production and the planned date to return to production or plug the Well.
- B. Financial Assurance Amount.** The total amount of Financial Assurance the Operator will provide to the Commission as soon as practicable but no later than 90 days from the Commission's approval of the Financial Assurance Plan, which will be:
- i. **Comprehensive Financial Assurance Amount (excluding Out of Service Wells).** Financial Assurance for every Well, in a total amount equal to \$40,000,000.
  - ii. **Low Producing, Inactive, or Out of Service Well Financial Assurance.**
    - aa. **Low Producing Wells.** The Operator's comprehensive Financial Assurance amount will cover Low Producing Wells up to 25% of the Operator's total number of Wells (excluding Out of Service Wells). The Operator will provide Single Well Financial Assurance for any Low Producing Well that exceeds the 25% threshold.
    - bb. **Inactive and Out of Service Wells.** The amount of Financial Assurance required by the Director pursuant to Rules 434.c & d.
    - cc. **Transferred Low Producing Wells.** Single Well Financial Assurance for any Well that exceeds the threshold set forth in Rule 702.d.(6).B.ii.aa and was subject to a transfer of operatorship approved by the Director pursuant to Rule 218.g.
  - iii. **Other Financial Assurance.** The amount of Financial Assurance required for:
    - aa. Other Oil and Gas Facilities pursuant to Rule 703;
    - bb. Surface Owner protection pursuant to Rule 704; and
    - cc. Remediation pursuant to Rule 703.b.
- C. Type of Financial Assurance.** The type of Financial Assurance the Operator proposes to provide, pursuant to Rule 701.
- D. Certification of Financial Capability.** An Operator will provide a Certification of Financial Capability signed by an Operator's corporate officer to ensure it is financially capable of meeting all of the obligations imposed by the Act and Commission's Rules.
- e. Procedure for Review of Financial Assurance Plans.**
- (1) **Director's Review.** Pursuant to Rules 702.b.(1).C.i & 702.b.(2).A, the Director will review an Operator's Financial Assurance Plan and may approve or deny such plan.
    - A. Approval.** The Director may approve a Financial Assurance Plan, subject to reasonable and necessary conditions of approval, if, in the Director's judgment, the plan meets all applicable requirements this Rule 702 and demonstrates that the Operator will provide adequate Financial Assurance to comply with all of the obligations under the Act and the Commission's Rules.

- B. Denial.** The Director may deny a Financial Assurance Plan if, in the Director's judgment, the plan does not comply with this Rule 702 or does not demonstrate that the Operator will provide adequate Financial Assurance to comply with all of the obligations under the Act and the Commission's Rules.
  - C. Additional Information.** If the Director determines that a Financial Assurance Plan is incomplete or deficient, or that more information is necessary to determine whether to approve or deny the Financial Assurance Plan, the Operator will provide the additional information that the Director requests. The Director will not fully consider the Financial Assurance Plan until the Operator provides the requested information.
  - D. Notice of Decision.** Upon making a Decision on the Operator's Financial Assurance Plan, the Director will post the written basis for the Director's Decision on the Commission's website, and notify the Operator electronically in a manner determined by the Director.
- (2) Commission's Review.** Pursuant to Rules 702.b.(1).C.ii & 702.b.(2).B, the Director will review an Operator's Financial Assurance Plan and recommend whether the Commission should accept or deny such plan.
- A. Director Recommendation.**

    - i. Recommended Acceptance.** The Director may recommend that the Commission accept a Financial Assurance Plan if it complies with the informational requirements of Rule 702.d and, in the Director's judgment, the Operator has demonstrated that it will provide adequate Financial Assurance to comply with all of its obligations under the Act and the Commission's Rules.
    - ii. Recommended Denial.** The Director may recommend that the Commission deny a Financial Assurance Plan if it does not comply with all the informational requirements of Rule 702.d, or, in the Director's judgment, the Operator has not demonstrated that it will provide adequate Financial Assurance to comply with all of its obligations under the Act and the Commission's Rules.
    - iii. Additional Information.** If the Director determines that a Financial Assurance Plan is incomplete, or that more information is necessary to determine whether to recommend that the Commission approve or deny the Financial Assurance Plan, the Operator will provide the additional information that the Director requests. The Director will not issue a recommendation, and the Commission will not consider the Financial Assurance Plan, until the Operator provides the requested information.
  - B. Timing of Commission's Review.** Pursuant to Rules 702.b.(1).C.ii & 702.b.(2).B, and after the Director issues a recommendation pursuant to Rule 702.e.(2).A, the Commission will consider the Financial Assurance Plan in a hearing pursuant to Rule 510.
  - C. Commission Approval.** The Commission may approve a Financial Assurance Plan, subject to reasonable and necessary conditions of approval, if it determines that the plan meets all applicable requirements of this Rule 702 and demonstrates that the Operator will provide adequate Financial Assurance to comply with all of its obligations under the Act and the Commission's Rules.
  - D. Commission Denial.** The Commission may deny a Financial Assurance Plan if it determines that the plan does not comply with this Rule 702 or does not demonstrate that the Operator will provide adequate Financial Assurance to comply with all of its obligations under the Act and the Commission's Rules.

- E. Additional Information.** The Commission, Administrative Law Judge, or Hearing Officer may require an Operator to submit additional information or evidence in support of its Financial Assurance Plan, pursuant to Rule 505.f.
- F. Commission's Order.** The Commission will issue an order memorializing its ruling on the Financial Assurance Plan following the Hearing. The order may include, at the Commission's discretion, one or more of the following requirements:

  - i. Deadlines.** Specific dates by which the Operator will reach full compliance with its Financial Assurance Plan, or Plug and Abandon certain Wells;
  - ii. Progress Reports.** A periodic report to the Commission or Director on the Operator's progress towards meeting certain required actions;
  - iii. Plan Renewal.** Re-submission of a Financial Assurance Plan at a future date to afford the Commission an opportunity to review any changes in the Operator's financial status; or
  - iv. Financial Assurance Amount.** The amount of Financial Assurance an Operator must provide, which may differ from the amount specified in Rules 702, 703, or 704.
- f. Transition Period.** The Director or Commission will consider any Financial Assurance in place as of April 29, 2022 as being applied towards the Operator's ongoing Financial Assurance obligations after April 30, 2022, unless the Commission issues an order specifying otherwise.

### 703. FINANCIAL ASSURANCE FOR OTHER OIL AND GAS FACILITIES & OPERATIONS

- a. Centralized E&P Waste Management Facilities.**

  - (1) Submission of Financial Assurance.** Pursuant to Rule 907.d, prior to the Director's approval of a Form 28, Centralized E&P Waste Management Facility Permit, the Operator will provide the Commission with Financial Assurance.
  - (2) Amount of Financial Assurance.** The Operator will provide Financial Assurance in an amount equal to the estimated cost necessary to ensure the proper Remediation, Reclamation, closure, and abandonment of the Centralized E&P Waste Management Facility. The Director may require the Operator to adjust the amount of Financial Assurance it provides to account for inflation pursuant to Rule 707.a.(1).A.
  - (3) Release of Financial Assurance.** Financial Assurance submitted pursuant to this Rule 703.a will remain in effect until the Operator submits a written request for release of the Financial Assurance demonstrating that:

    - A.** The Operator has transferred the Centralized E&P Waste Management Facility pursuant to Rule 218;
    - B.** The Director has approved final closure and Reclamation of the Centralized E&P Waste Management Facility pursuant to Rule 907.h and the Commission's 1000 Series Rules; or
    - C.** The Operator has filed a Form 4 to abandon the permit for the Centralized E&P Waste Management Facility without constructing the facility, and the facility passes an inspection for permit abandonment.

**b. Remediation Projects.**

- (1) Submission of Financial Assurance.** In reviewing an Operator's Form 27, Site Investigation and Remediation Workplan, if the Director determines that the Operator's Financial Assurance is inadequate to address the scope of Remediation activities contemplated by the form, the Director may require the Operator to provide Financial Assurance, or additional Financial Assurance, as a condition of approval.

  - A.** If an Operator disagrees with the Director's determination, the Operator may file an application for a Financial Assurance hearing before the Commission pursuant to Rule 503.g.(11).
  - B.** The Director may conditionally approve the Operator's Form 27, and the Operator may commence Remediation activities, prior to the Commission issuing a final order in such a hearing.
- (2) Amount of Financial Assurance.** The Operator will provide Financial Assurance in an amount equal to the estimated cost necessary to ensure the proper Remediation, Reclamation, closure, and abandonment of the Remediation project site. The Director may require the Operator to adjust the amount of Financial Assurance it provides to account for inflation pursuant to Rule 707.a.(1).A.
- (3) Release of Financial Assurance.** Financial Assurance required by this Rule 703.b will be held by the Director until the required Remediation of soil and/or Groundwater impacts is completed pursuant to the approved workplan and Rule 913.h.

**c. Seismic Operations.**

- (1) Submission of Financial Assurance.** At the time an Operator submits a Form 20, Permit to Conduct Seismic Operations pursuant to Rule 313, the Operator will file Financial Assurance to ensure the proper Plugging and Abandonment of any shot holes and any necessary surface Reclamation.
- (2) Amount of Financial Assurance.** The Operator will provide statewide blanket Financial Assurance in the amount of \$25,000, adjusted for inflation pursuant to Rule 707.a.(1).A.
- (3) Release of Financial Assurance.** The Financial Assurance will remain in effect until the Operator submits a written request for release of the Financial Assurance demonstrating that following conditions have been met:

  - A.** All shotholes have been properly Plugged and Abandoned pursuant to Rule 436.e.(4);
  - B.** The Reclamation required by Rule 436.h has been completed;
  - C.** The Operator has submitted and the Director has approved the Form 20A for all Seismic Operations covered by the Financial Assurance; and
  - D.** All complaints received from Surface Owners have been investigated, addressed, and resolved by the Director pursuant to Rule 524.

**d. Gas Gathering, Gas Processing, and Underground Gas Storage Facilities.**

- (1) Submission of Financial Assurance.** At the time an Operator submits a Form 12, Gas Facility Registration, the Operator of a gas gathering, gas processing, or underground gas storage facility will provide Financial Assurance to ensure compliance with the Commission's 900 Series Rules.

**(2) Amount of Financial Assurance.**

- A.** The Operator will provide Financial Assurance in the amount of \$100,000 for the Operator's Gas Facility(ies), adjusted for inflation pursuant to Rule 707.a.(1).A, unless the gas gathering or gas processing system meets the criteria of Rule 703.d.(2).B.
- B.** Operators of small systems gathering or processing less than 5 million standard cubic feet per day ("MMSCFD") may provide individual Financial Assurance in the amount of \$5,000, adjusted for inflation pursuant to Rule 707.a.(1).A.
- C.** If the Director determines, based on an Operator's compliance record, the number or severity of Spills or Releases at the Operator's Gas Facilities requiring remediation, and other relevant evidence, that the Operator's Financial Assurance amount for its Gas Gathering, Gas Processing, or Underground Gas Storage Facilities should be increased, the Director will require the Operator to immediately provide additional Financial Assurance. If the Operator disagrees with the Director's determination, the Operator may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11).

**(3) Release of Financial Assurance.** Financial Assurance submitted pursuant to this Rule 703.d will remain in effect until the Operator submits a written request for release of the Financial Assurance demonstrating that:

- A.** The Operator has transferred the facility to another Operator pursuant to Rule 218; or
- B.** The Operator has fully decommissioned the facility, and any outstanding Spills, Releases, and Remediation projects have been closed pursuant to the Commission's 900 Series Rules.

**e. Produced Water Transfer Systems.**

**(1) Submission of Financial Assurance.** At the time an Operator submits a Form 44, Flowline Report to register a Produced Water Transfer System pursuant to Rule 1101.d.(1), the Operator will provide Financial Assurance to ensure compliance with the Commission's 900 Series Rules.

**(2) Amount of Financial Assurance.**

- A.** The Operator will provide Financial Assurance in the amount of \$50,000 per facility, adjusted for inflation pursuant to Rule 707.a.(1).A, unless the Produced Water Transfer System meets the criteria of Rule 703.e.(2).B.
- B.** Operators of small systems transferring less than 700 Barrels of water per day may provide individual Financial Assurance in the amount of \$5,000, adjusted for inflation pursuant to Rule 707.a.(1).A.

**(3) Release of Financial Assurance.** Financial Assurance submitted pursuant to this Rule 703.e will remain in effect until the Operator submits a written request for release of the Financial Assurance demonstrating that:

- A.** The Operator has transferred the Produced Water Transfer System to another Operator pursuant to Rule 218; or
- B.** The Operator has fully decommissioned the Produced Water Transfer System, and any outstanding Spills, Releases, and Remediation projects have been closed pursuant to the Commission's 900 Series Rules.

**f. Commercial Disposal Facilities.**

- (1) Submission of Financial Assurance.** At the time an Operator submits an application for a new Commercial Disposal Well pursuant to Rule 810.a, the Operator will provide Financial Assurance to ensure compliance with the Commission's 900 Series Rules by all surface facilities and structures appurtenant to the Commercial Disposal Well. This Rule 703.f does not relieve the Operator of its obligation to provide Financial Assurance for the Well itself pursuant to Rule 702.
- (2) Amount of Financial Assurance.** The Operator will provide \$100,000 in Financial Assurance for each Commercial Disposal Well facility, adjusted for inflation pursuant to Rule 707.a.(1).A.
- (3) Release of Financial Assurance.** Financial Assurance submitted pursuant to this Rule 703.f will remain in effect until the Operator submits a written request for release of the Financial Assurance demonstrating that:
  - A.** The Operator has transferred the Commercial Disposal Well to another Operator pursuant to Rule 218; or
  - B.** The Operator has Plugged and Abandoned the Commercial Disposal Well, passed final Reclamation for the Oil and Gas Location and all surface facilities appurtenant to the Well, and has completed any Remediation required by the Commission's 900 Series Rules.

**704. SURFACE OWNER PROTECTION BONDS**

- a. When Surface Owner Protection Bonds Are Required.** To protect Surface Owners from unreasonable crop loss or land damage caused by Oil and Gas Operations, if a Surface Owner is not a party to a lease, Surface Use Agreement, or other relevant agreement with an Operator, the Operator will provide Financial Assurance to the Commission prior to commencing any operations with heavy equipment on that Surface Owner's property.
  - (1) Amount of Financial Assurance.** Operators will provide Financial Assurance of:
    - i.** \$4,000 per Well for non-irrigated land;
    - ii.** \$10,000 per Well for irrigated land; or
    - iii.** \$100,000 as a statewide blanket bond.
  - (2) State Lands.** If Oil and Gas Operations are conducted on state lands and a bond has been filed with the State Board of Land Commissioners, an Operator need not file a Surface Owner protection bond pursuant to this Rule 704.
- b. Procedures for Claiming Surface Owner Protection Bonds.** A Surface Owner may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) if the Surface Owner believes that crop loss or other damage caused by Oil and Gas Operations subject to this Rule 704 is unreasonable.
  - (1)** The Surface Owner will bear the burden of proving that it has withstood unreasonable crop loss or land damage.
  - (2)** If the Commission finds in favor of the Surface Owner, the Commission may order an Operator to conduct corrective or remedial action, provide a monetary award for unreasonable crop loss or land damage that cannot be Remediated or corrected, or other relief as appropriate. The amount of such a monetary award is not limited to the amount of the Operator's Financial Assurance provided pursuant to this Rule 704.

- c. Release of Financial Assurance.** Financial Assurance provided pursuant to this Rule 704 will be held until:
- (1)** For an individual Surface Owner protection bond:
    - A.** The Operator transfers the Well subject to the Surface Owner protection bond pursuant to Rule 218;
    - B.** The Operator Plugs and Abandons the Well subject to the Surface Owner protection bond, the Well passes final Reclamation, and any necessary Remediation is conducted as demonstrated by closure of any Form 19, Spill/Release Report or Form 27, Site Investigation and Remediation Workplan;
    - C.** The Operator files a Form 4 to abandon the permit for the Well subject to the Surface Owner protection bond without constructing the Oil and Gas Location or Spudding the Well, and the Well passes an inspection for permit abandonment; or
    - D.** The Operator enters into a Surface Use Agreement, lease, or other relevant agreement with the Surface Owner.
  - (2)** For a blanket Surface Owner protection bond:
    - A.** The Operator transfers all drilled Wells subject to the Surface Owner protection bond pursuant to Rule 218;
    - B.** The Operator Plugs and Abandons all drilled Wells subject to the Surface Owner protection bond, all Wells subject to the Surface Owner protection bond pass final Reclamation, and any necessary Remediation is conducted as demonstrated by closure of any Form 19 or Form 27;
    - C.** The Operator files a Form 4 to abandon the permit for all Wells subject to the Surface Owner protection bond without constructing the Oil and Gas Location(s) or Spudding the Well(s), and the Well(s) pass an inspection for permit abandonment; or
    - D.** The Operator enters into a Surface Use Agreement, lease, or other relevant agreement with all Surface Owners subject to the Surface Owner protection bond.

## **705. GENERAL LIABILITY INSURANCE**

- a. Consolidation of Related Operators.** Where a registered Operator owns, holds, or controls 50% or more of one or more other registered Operators, that parent company Operator may fulfill the obligations of this Rule 705 for itself and its subsidiary Operator companies, provided that the policy or policies name both the parent and subsidiary Operator companies and provide coverage in the required amounts for each entity the parent Operator company seeks to cover. Consolidation under this Rule will include all of a parent Operator's subsidiary Operators.
- b.** All Operators will maintain general liability insurance coverage for property damage, bodily injury to third parties, and sudden or accidental pollution that requires Remediation, with no exclusion for claims arising from operator-caused seismicity from oil or gas Wells, in the minimum amount of \$5,000,000 per occurrence. The coverage required by this Rule may be secured alone or in combination with an umbrella or excess policy.
- c.** All such general liability insurance policies will include the Commission as a "certificate holder" and "scheduled person or organization" so that the Commission may receive advance notice of cancellation.

- d. Operators will demonstrate their compliance with Rule 705.a by providing information about their insurance coverage on their Form 1.
- e. Operators will provide notice of any renewals or changes to their general liability insurance during the previous 12 months on their Form 1B, Annual Registration.
- f. Operators will provide information about their general liability insurance coverage and whether that coverage is sufficient to cover Remediation costs on the Form 19 – Supplemental or Form 27 the Operator files pursuant to Rule 912.b.(6).

#### 706. RELEASE OR CLAIM OF FINANCIAL ASSURANCE

- a. **When Financial Assurance Reverts to Operators.** The Director will release part or all of an Operator's Financial Assurance, including any accrued interest from a Cash Bond, if the Operator submits a Form 3A requesting release of the Financial Assurance, and any of the following conditions have been met:
  - (1) **Full Compliance.** The Director determines that an Operator has fully complied with all of its statutory and regulatory obligations for Plugging and Abandonment, Remediation, and Reclamation of all Oil and Gas Facilities subject to the Operator's control pursuant to the Commission's Rules;
  - (2) **Transfer of Operatorship.** The Director approves a Form 9 – Subsequent pursuant to Rule 218.g.(4) certifying that one or more Buying Operator(s) have filed sufficient replacement Financial Assurance for all Wells, Oil and Gas Locations, and Oil and Gas Facilities subject to the Operator's control;
  - (3) **Other Facilities and Operations.** The Operator meets the requirements for release of Financial Assurance held for a specific category of facility or operation identified in Rule 703 or for release of a Surface Owner protection bond pursuant to Rule 704.c; or
  - (4) **Single Well Financial Assurance for Wells.** The Operator fully Plugs and Abandons and Reclaims a Well that has an associated Single Well Financial Assurance.
  - (5) **Abandonment of Permit without Construction.** The Operator abandons a permit for a Well, Oil and Gas Location, or Oil and Gas Facility without disturbing the surface or otherwise constructing the applicable facility, and files a Form 4, Sundry Notice to formally request abandonment of the permit and a field inspection confirms no disturbance or construction occurred.
- b. **Procedure for Director to Access Financial Assurance.** If an Operator fails to fulfill its statutory and regulatory obligations for Plugging and Abandonment, Remediation, and Reclamation, the Director will suspend the Operator's Form 1 and Form 10, Certificate of Clearance and will file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) to claim the Operator's Financial Assurance.
  - (1) **Hearing Procedures.** The Secretary will serve notice of the Director's hearing application on the Operator and, where applicable, any applicable third-party provider of the Financial Assurance pursuant to Rule 504.
    - A. The Operator, third-party provider of Financial Assurance, and any other Affected Person may petition to participate in the hearing pursuant to Rule 507.
    - B. If no petition is filed, the matter may be resolved as an uncontested matter on the Commission's consent agenda pursuant to Rules 508 & 519.

- C. At hearing, the Commission has discretion to order appropriate relief, including but not limited to permanently revoking the Operator's license to conduct Oil and Gas Operations in Colorado.
- (2) **Director's Action to Claim Financial Assurance Pursuant to Commission Order.** If the Commission approves the Director's application to claim the Operator's Financial Assurance, the Director will:
- A. Transfer any Cash Bond to the Oil and Gas Conservation and Environmental Response Fund;
  - B. Call any Surety Bond or Letter of Credit held by a third party for the benefit of the Commission and deposit the called funds in the Oil and Gas Conservation and Environmental Response Fund;
  - C. Foreclose upon any liens or otherwise secured real or physical property held as a form of Financial Assurance and deposit the foreclosed funds in the Oil and Gas Conservation and Environmental Response Fund; and
  - D. Take any other actions necessary to liquidate and transfer any other assets held as Financial Assurance into the Oil and Gas Conservation and Environmental Response Fund.
- c. **Recalcitrant Bond Providers.** If a third-party provider of Financial Assurance fails to comply with the terms of a financial instrument, or with a Commission order calling a Surety Bond, Letter of Credit, or other form of Financial Assurance, the Director may designate that third-party provider to be an unacceptable provider. The Director will maintain a list of all unacceptable Financial Assurance providers on the Commission's website.
- (1) **Reinstatement of Unacceptable Third-Party Providers.** The Director will not accept any new Financial Assurance that an Operator seeks to provide through an unacceptable provider until the third-party provider applies for a hearing before the Commission pursuant to Rule 503.g.(11) and obtains an order of reinstatement from the Commission.
- (2) **Suits to Recover Financial Assurance.** The Commission may file suit pursuant to § 34-60-109, C.R.S., to recover Financial Assurance based on a valid Commission order claiming the Financial Assurance pursuant to Rule 706.b.(2).
- d. **Refund of Claimed Financial Assurance.** If any portion of an Operator's Financial Assurance that is claimed pursuant to Rule 706.b is not needed to cover the costs of Plugging and Abandonment, Reclamation, and Remediation of an Orphaned Site, the Director will refund the remainder of the Financial Assurance to the entity that provided the Financial Assurance. The Director may claim an overhead recovery fee of 10% of the funds as direct costs charged against any Financial Assurance that would otherwise be refunded to the entity that provided the Financial Assurance.
- e. **Procedure for Operator to Pursue Release of Financial Assurance.** If the Director or the Commission fails to timely release all or part of an Operator's Financial Assurance after the Operator has satisfied its requirements pursuant to Rule 706.a, the Operator may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11).

## 707. REVIEW OF FINANCIAL ASSURANCE

### a. Director's Review of Financial Assurance.

- (1) **Annual Review.** Beginning July 1, 2023, the Director will conduct a review of every registered Operator's Financial Assurance at least once every fiscal year to ensure that the Operator is in compliance with its approved Financial Assurance Plan and that the Operator continues to satisfy the eligibility requirements for the Option under which its Financial Assurance Plan was approved. The Director will document the results in writing of every annual review, and make the results available to the public on the Commission's website.
  - A. The Director's review may include whether the Operator's Financial Assurance should be updated to reflect inflation.
  - B. The Director's review may include the Operator's insurance coverage and whether any Financial Assurance the Operator has provided is sufficient to address the Operator's Remediation obligations under the Commission's 900 Series Rules.
  - C. The Director's review will include the verification of the existence of Financial Assurance instruments, confirmation that required restrictions are applied, verification of balances, and confirmation that the Commission is authorized to access the funds.
  - D. If the Director determines that an Operator has not provided adequate Financial Assurance pursuant to the Commission's 700 Series Rules or is not in compliance with the Operator's approved Financial Assurance Plan, the Director will notify the Operator in writing and provide a reasonable timeframe for the Operator to cure the deficiency. The Director may also require the Operator to file a revised Financial Assurance Plan pursuant to Rule 702.b.(4).
  - E. If the Operator disagrees with the Director's determination, the Operator may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11).
- (2) **Discretionary Review.** If the Director has reasonable cause to believe that the Commission may become burdened with the costs of fulfilling an Operator's Plugging and Abandonment, Reclamation, or Remediation obligations under the Act or the Commission's Rules because the Operator has demonstrated a pattern of non-compliance with the Commission's Rules or other unique circumstances, the Director may file an application for a Financial Assurance hearing pursuant to Rule 503.g.(11) to obtain the Commission's approval of a plan for the Operator to provide additional Financial Assurance beyond what would otherwise be required under the Commission's 700 Series Rules.

### b. Commission's Review of Financial Assurance.

- (1) **Regular Review.** If an Operator's Commission-approved Financial Assurance Plan requires regularly scheduled Commission review during a hearing, the Operator will seek a Financial Assurance hearing pursuant to Rule 503.g.(11) in accordance with the terms of the Order approving the Financial Assurance Plan.
- (2) **Commission's Own Motion.**
  - A. At any time, the Commission may commence a Financial Assurance hearing for any Operator on its own motion pursuant to Rule 503.a.

**B. Procedure for Commission Hearing.**

- i. **Notice.** If the Commission commences a hearing on its own motion pursuant to this Rule 707.b.(2), the Secretary will provide notice to the Operator pursuant to Rule 504.b.(10).B.
  - ii. **Evidence.** The Operator will submit all information requested by the Commission into the evidentiary record for the hearing pursuant to Rule 503.g.(11), including but not limited to information regarding the status and production of its Wells, its present Financial Assurance, and relevant metrics of its financial status.
  - iii. **Financial Assurance Plan.** The Commission may require an Operator to submit a Financial Assurance Plan pursuant to Rule 702.b prior to the Financial Assurance hearing.
- (3) **Commission Order.** The Commission's final order regarding the Operator's Financial Assurance may require an Operator to provide additional Financial Assurance beyond what is ordinarily required by the Commission's Rules based on the unique circumstances of the Operator, if those circumstances demonstrate a risk of the Operator being unable to comply with its obligations to Plug and Abandon Wells, perform proper Reclamation, or perform proper Remediation.