

99 NOV -9 PM 4:45



Richard L. Alvidrez  
Attorney at Law  
Direct Dial: 505-346-9150  
E-mail: rla@keleher-law.com

November 9, 1999

432-057

Marilyn S. Hebert  
Legal Counsel  
New Mexico Oil Conservation Commission  
2040 South Pacheco  
Santa Fe, New Mexico 87505

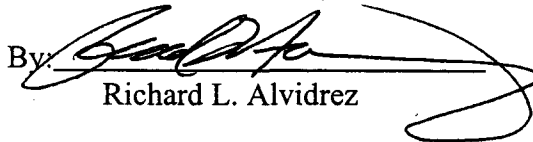
**Re: Oil Conservation Division No. 12,033; Order No. R-11134  
Application of Public Service Company of New Mexico To Reopen  
De Novo Hearing to Submit New and Relevant Evidence**

Dear Ms. Hebert:

Enclosed please find for your consideration Public Service Company  
of New Mexico's Application to Reopen *De Novo* Hearing to Submit New and  
Relevant Evidence and Certificate of Service concerning same.

Very truly yours,

KELEHER & McLEOD, P.A.

By:   
Richard L. Alvidrez

RLA:dlb  
Enclosures

DAM0596

cc: William F. Carr, Esq. (with enc.)  
Rand L. Carroll, Esq. (with enc.)

W. A. Keleher (1886-1972)  
A.H. McLeod (1902-1976)

**Mailing Address**  
PO Drawer AA  
Albuquerque NM 87103

**Main Phone**  
505-346-4646

**Street Address**  
Albuquerque Plaza  
201 Third NW, 12th floor  
Albuquerque NM 87102  
Fax: 505-346-1370

414 Silver SW, 12th floor  
Albuquerque NM 87102  
Fax: 505-346-1345

Member, Commercial Law  
Affiliates\*, the world's largest  
affiliation of independent law firms

*Running Horses* © Gray Mercer 1989,  
provided for the City of Albuquerque  
Public Art Collection in 1991.

000072

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

OIL CONSERVATION DIV.  
99 NOV -9 PM 4:45

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR *DE NOVO* HEARING ON  
ORDER NO. R-11134 ISSUED BY THE NEW MEXICO OIL CONSERVATION DIVISION IN  
OCD CASE NO. 12,033

CASE NO. 12, 033

**APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO TO  
REOPEN *DE NOVO* HEARING TO SUBMIT  
NEW AND RELEVANT EVIDENCE**

COMES NOW Applicant, Public Service Company of New Mexico ("PNM"), and hereby requests that the New Mexico Oil Conservation Commission ("OCC" or "Commission") re-open the *de novo* hearing in the above matter for purposes of allowing PNM leave to submit additional, new and relevant evidence in Case No. 12,033. In support of this application, PNM states as follows:

1. PNM filed an application for a *de novo* hearing on OCD Order No. R-11134 requiring PNM to undertake certain further investigation and remediation activities at the Hampton 4M well site operated by Burlington Resources Oil and Gas Company ("Burlington").

2. A *de novo* hearing was held before the Commission on August 26 and 27, 1999. At the hearing, PNM, Burlington and the New Mexico Oil Conservation Division

000073

("OCD") submitted pre-filed direct and rebuttal testimony, including exhibits, and tendered their respective witnesses for cross-examination.

3. At the conclusion of the hearing, the Commission verbally instructed the parties to the proceeding to confer about what appropriate further site investigation may be required at the Hampton 4M site.

4. PNM, Burlington and the OCD met at the Hampton 4M site and conferred about appropriate further investigation, including the installation of additional monitoring wells.

5. At the instruction of the OCD, Burlington installed three (3) new wells at the Hampton 4M site on October 13, 1999. The three new wells were denominated as MW-14, MW-15 and MW-16. MW-14 was installed in the southeast corner of the well pad between the former TPW-5 and TPW-7, near the former location of Burlington's liquids storage tanks. MW-15 was installed directly north and downgradient of the vicinity of Burlington's separator fluids pit. MW-16, a four-inch diameter product recovery well, was installed along the eastern limits of Burlington's former mass excavation on the northern portion of the well-pad, near and slightly upgradient of PNM's former pit location. The locations of the new wells are depicted in the diagram attached as Exhibit "A".

6. On October 21, 1999, PNM conducted sampling of all existing wells at the Hampton 4M site, including the new wells installed by Burlington. Sampling in MW-14, the monitoring well installed near the former location of Burlington's liquids storage tanks, revealed approximately two (2) feet of free product floating on the groundwater in the southeast corner of the well-pad, substantially upgradient from PNM's former and

000071

Williams' existing operations at the site. The newly detected two (2) feet of free product on the groundwater confirms that a continuing release of free product exists, or alternatively, that a large volume of free product is still present in the vadose zone near Burlington's operations. These recent findings have confirmed PNM's opinion, as expressed at the hearing in this matter, that had Burlington allowed TPW-5 or 7 to remain in place for a sufficient time, free product would most likely have been detected in this area at a much earlier date.

7. The sampling has also produced additional data that reveal an upward trend of hydrocarbon contamination in the seep area and in wells downgradient from the well pad. These new findings are consistent with PNM's opinion that Burlington's mass excavation was not an effective remediation strategy and is likely responsible for a renewed mobilization of groundwater contaminants and an increasing trend of contaminant movement off-site. The off-site migration of contaminants indicates that the source of contamination has not been stopped or remediated and the natural attenuation processes are not able to remove contaminants as quickly as they are being released. A copy of the most recent cumulative sampling results, including the sampling results from MW-14, MW-15 and MW-16, is attached as Exhibit "B".

8. The latest sampling results are relevant to the issues in this proceeding in the following respects:

- a. They confirm the presence of significant free product contamination in the area of Burlington's present and former operations at the Hampton 4M well site far upgradient from PNM's former dehydration pit.

000075

- b. They confirm either the presence of a continuing release of free product, or alternatively, that a large volume of free product is still present in the vadose zone near Burlington's operations, and that further remediation efforts in the area of PNM's former pit as directed by the OCD would be futile.
- c. They confirm that Burlington's remediation efforts, in the form of a mass excavation in the area of PNM's former dehydration pit, were ineffective at remediating free product contamination upgradient in the southeastern area of the well pad.
- d. They confirm that Burlington's remediation efforts, in the form of a mass excavation in the area of PNM's former dehydration pit, has likely resulted in a renewed mobilization of groundwater contaminants off-site and that the source of contamination has not been stopped or remediated.
- e. They confirm that the natural attenuation processes are not able to remove contaminants as quickly as they are being released and that natural attenuation is an ineffective remedy unless and until free product is removed from groundwater underlying the southeastern portion of the site.
- f. They confirm that free product migrated downgradient from the area of Burlington's operations to the area of PNM's former dehydration pit.

000076

- g. They confirm that additional investigation and well installations are advisable in the area of Burlington's operations.
- h. They confirm that the most effective location for additional investigation and remediation activities is in the area of Burlington's operations, not in the area of PNM's former operations.
- i. They confirm that the installation of a free product recovery well or wells by Burlington and/or the institution of additional source control measures by Burlington in the vicinity of their operations at the southeastern portion of the wellpad to is highly advisable.
- j. They confirm that the continuing release or residual from former releases of free product from Burlington's operations on the southern portion of the well pad upgradient of PNM's former and Williams' current operations will likely cause recontamination of the already remediated portions of the wellpad, including the area of PNM's former pit, as well as promote the offsite migration of hydrocarbon contaminants.
- k. They confirm that dissolved phase contamination will continue to persist and propagate further into offsite areas until the free phase product located under Burlington's operations is remediated.
- l. They confirm that free product accumulates on the southeastern portion of the well pad adjacent to bedrock and that the free

000077

product moves along the east edge of the well pad from the area of Burlington's operations to downgradient locations.

9. The installation of the new wells and the recent sampling data from these new and existing wells constitutes new and highly relevant evidence to the outcome of the present *de novo* appeal. This new evidence did not previously exist and could not have been presented to the Commission in either pre-filed testimony or at the hearing held in this matter.

10. PNM proposes to present the new evidence to the Commission in the form of either pre-filed testimony or live testimony, with accompanying exhibits, as may be directed by the Commission. PNM anticipates that such testimony would be presented by PNM Witness Maureen Gannon who previously provided both pre-filed and live testimony in this proceeding.

11. The Commission has not ruled in this matter and has not issued any briefing schedule. The hearing transcript has not yet been transcribed. There would be no prejudice to any party by the admission of this new evidence, nor would the admission of such new evidence unduly delay the resolution of this matter. Conversely, if PNM is not allowed to present this new and highly relevant evidence, it would be deprived of a full and fair hearing on the merits of its case.

12. For the foregoing reasons, PNM respectfully requests that the Commission grant PNM leave to offer and have admitted into the record the new evidence as described above.

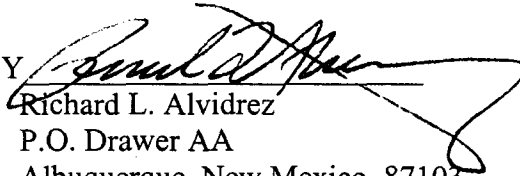
000070

13. Counsel for PNM has conferred with counsel for Burlington and the OCD and has been informed that this motion is opposed by Burlington. Counsel for PNM has not received a response from counsel from the OCD.

Respectfully submitted,

KELEHER & McLEOD, P.A.

BY

  
Richard L. Alvidrez  
P.O. Drawer AA  
Albuquerque, New Mexico 87103  
(505) 346-4646

and

Colin L. Adams  
Corporate Counsel  
Public Service Company of New Mexico  
Alvarado Square MS 0806  
Albuquerque, New Mexico 87158  
(505) 241-4538

Attorneys for Public Service Company of  
New Mexico

000073



STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR *DE NOVO* HEARING ON ORDER NO. R-11134 ISSUED BY THE NEW MEXICO OIL CONSERVATION DIVISION IN OCD CASE NO. 12,033

CASE NO.12,033

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO TO REOPEN *DE NOVO* HEARING TO SUBMIT NEW AND RELEVANT EVIDENCE was mailed this 9<sup>th</sup> day of November, 1999 to the following:

William F. Carr  
CAMPBELL, CARR BERGE & SHERIDAN, P.A.  
Suite 1 - 110N. Guadalupe  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208

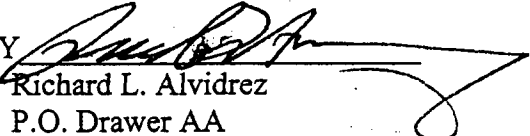
Rand L. Carroll  
Legal Counsel  
New Mexico Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

Marilyn S. Hebert  
Legal Counsel  
New Mexico Oil Conservation Commission  
2040 South Pacheco  
Santa Fe, New Mexico 87505

OIL CONSERVATION DIV.  
99 NOV - 9 PM 4:45

KELEHER & McLEOD, P.A.

BY

  
Richard L. Alvidrez  
P.O. Drawer AA  
Albuquerque, New Mexico 87103  
(505) 346-4646

and

Colin L. Adams  
Corporate Counsel  
Public Service Company of New Mexico  
Alvarado Square MS 0806  
Albuquerque, New Mexico 87158  
(505) 241-4538

Attorneys for Applicant Public Service Company  
of New Mexico

RLA0111