

OIL CONSERVATION DIV.

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

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

CASE NO. 12033

93 NOV 17 AM 9:01

OIL CONSERVATION DIV.

APPLICATION OF PUBLIC SERVICE COMPANY
OF NEW MEXICO FOR REVIEW OF OIL CONSERVATION
DIVISION DIRECTIVE DATED MARCH 13, 1998,
DIRECTING APPLICANT TO PERFORM
ADDITIONAL REMEDIATION FOR HYDROCARBON
CONTAMINATION, SAN JUAN COUNTY, NEW MEXICO.

BURLINGTON RESOURCES OIL AND GAS COMPANY'S
MOTION TO DISMISS THE APPLICATION OF
PUBLIC SERVICE COMPANY OF NEW MEXICO
TO REOPEN *DE NOVO* HEARING TO SUBMIT
NEW AND RELEVANT EVIDENCE

COMES NOW Burlington Resources Oil and Gas Company ("Burlington") and hereby moves the Oil Conservation Commission for an order dismissing the application of the Public Service Company of New Mexico ("PNM") to reopen the *de novo* hearing for the purpose of submitting new evidence, and in support of its motion states:

1. By letter dated March 13, 1998, the Oil Conservation Division wrote PNM concerning ground water contamination at the Hampton 4M well site. The Division expressed concern about the migration of contaminated ground water onto downgradient

000000

private lands and the presence of private water wells downgradient of the site. The Division's letter further "required PNM to "...take additional remedial actions within 30 days to remove the remaining source areas with free phase hydrocarbons in the vicinity of and immediately downgradient of the dehy pit."

2. This case is before the Commission on the application of the Public Service Company of New Mexico in which it asks the Oil Conservation Commission to "...reverse and nullify the OCD's Final Determination [the March 13, 1998 letter] and enter a finding that PNM is not a "responsible person" for purposes of any further investigation or remediation at the Hampton 4M site." The sole issue before the Commission in this proceeding is whether or not PNM is a responsible person for remediation and investigation at this site.

3. Burlington Resources Oil & Gas Company is the operator of the Hampton 4M Well. It has admitted that it is one of the responsible parties for contamination at this well site. Burlington has expended substantial funds and efforts to remediate the site. Their effort are not concluded.

4. Since it first filed its application in this case, PNM has attempted to direct the case away from the issue before the Commission, to a critique of the efforts of Burlington to remediate this site- an effort in which PNM has refused to participate and for which PNM has refused to pay remediation costs.

5. This case was the subject of a two day Commission hearing in August 1998, in which PNM appealed the determination of the Oil Conservation Division that PNM

000031

was a responsible party for investigation and remediation at the Hampton 4M Well site.

6. Following the August hearing, the Division requested that additional monitor wells be drilled at the site. Three wells were drilled by Burlington. PNM has declined to share any of the costs of drilling. All three wells are located up gradient of the former PNM unlined surface disposal pit.

7. Additional data has been obtained and will continue to be acquired from these wells, including the new wells, at this site until the contamination has been remediated.

8. Recent sample results show additional contamination at the site above the location of the former PNM pit.

9. PNM seeks to reopen the *de novo* hearing in this case so it can present evidence which it characterizes as "highly relevant" to the issues in this proceeding.

10. The problem with PNM's "highly relevant" new evidence is that it is not relevant to the issue before the Commission. That issue is whether or not PNM should be relieved of responsibility for investigation and remediation at this site after March 13, 1998.

11. PNM's new "highly relevant" evidence is described in paragraph 8 of its application to reopen as follows:

A. PNM reports that the new evidence shows contamination remains at the well site (sub-paragraphs a, b, f, j and l). There is no dispute as to this fact and Burlington is working with the Division to remediate

000000

the site. PNM declines to contribute to the cost of this effort.

However, the presence of contamination on the upgradient portion of the well site has no relevance to the issue of whether PNM is a responsible person for the remediation of the contamination which resulted from the discharge of hydrocarbons from its dehydration equipment into an unlined surface pit downgradient of the new monitor wells at the Hampton 4M Well site.

- B. PNM complains, as it did throughout the August hearing, about the way Burlington has conducted the Division approved remediation at the site(sub-paragraphs c, d, f and j). These complaints have no relevance to the issue of whether PNM is a responsible person for remediation at the site.
- C. PNM calls for additional investigation and remediation at the site (sub-paragraphs, g, h, i and k). Investigation and remediation are occurring without the contribution of PNM to the costs associated with this effort. What is being done today to remediate the site by Burlington, or what needs to be done in the future, is not relevant to the question of whether or not PNM contributed to this contamination and should be responsible for some portion of the remediation at the site.

- 12. As long as Burlington and the Division attempt to remediate the

000000

contamination at this site, new data will continue to be developed. Further efforts to remediate will be governed by this data. However, this new data should not be used to divert the review of the PNM application away from the issue which PNM has brought before the Commission. That issue is whether PNM is a responsible party for contamination at this site.

13. Furthermore, to continually reopen a case every time there is additional evidence to permit a party who is not paying the costs of remediation to complain about those who are complying with Oil Conservation Division Environmental Bureau directives, will set as a precedent which will discourage anyone in the future from ever attempting to remediate a site while a case is pending before the Division or Commission.

WHEREFORE, Burlington Resources Oil & Gas Company requests that the Commission deny PNM's request to reopen the *de novo* hearing in this matter because the "new data" is not relevant to the determination of whether PNM is a responsible person for remediation of the Hampton 4M Well site.

Respectfully submitted,

CAMPBELL, CARR, BERGE
AND SHERIDAN, P.A.

By: 

William F. Carr
Post Office Box 2088
Santa Fe, New Mexico 87501
(505) 988-4412

Attorneys for Burlington
Resources Oil & Gas Company

000004

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

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

CASE NO. 12033

APPLICATION OF PUBLIC SERVICE COMPANY
OF NEW MEXICO FOR REVIEW OF OIL CONSERVATION
DIVISION DIRECTIVE DATED MARCH 13, 1998,
DIRECTING APPLICANT TO PERFORM
ADDITIONAL REMEDIATION FOR HYDROCARBON
CONTAMINATION, SAN JUAN COUNTY, NEW MEXICO.

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing Motion to Dismiss the Application of PNM to Reopen DeNovo Hearing was hand-delivered this 17th day of November, 1999 to the following:

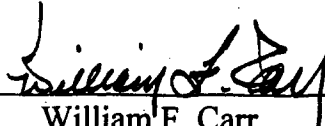
Rand L. Carroll
Legal Counsel
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Marilyn Hebert
Legal Counsel
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Mr. Richard Alvidrez
Keleher & McLeod, P.A.
P.O. Drawer AA
Albuquerque, NM 87103

Respectfully Submitted,

CAMPBELL, CARR, BERGE
AND SHERIDAN, P.A.

By: 
William F. Carr
Post Office Box 2088
Santa Fe, New Mexico 87501
(505) 988-4412

Attorneys for Burlington Resources
Oil & Gas Company