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April 12, 2000

(432-057)

HAND-DELIVERED

New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe NM 87505

Attention: Clerk of the Commission


**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**

Ladies and Gentlemen:

Enclosed please find for filing the original and five (5) copies of Public Service Company of New Mexico's Application for Rehearing on Order No. R-11134-A Issued by the New Mexico Oil Conservation Commission and Certificate of Service concerning the above-referenced cause. Thank you.

Very truly yours,

KELEHER & McLEOD, P.A.

By: 
Richard L. Alvidrez

RLA:dam: DAM0971

Enclosures

cc: Rand Carrol, Esq.
William F. Carr, Esq.

OIL CONSERVATION DIV.
00 APR 12 AM 11:59

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

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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 REVIEW OF CONSERVATION
DIRECTIVE DATED MARCH 13, 1998, DIRECTING
APPLICANT TO PERFORM ADDITIONAL
REMEDiation FOR HYDROCARBON
CONTAMINATION, SAN JUAN COUNTY,
NEW MEXICO**

**De Novo
CASE NO. 12033
Order No. R11134-A**

**APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO
FOR REHEARING ON ORDER NO. R-11134-A ISSUED BY
THE NEW MEXICO OIL CONSERVATION COMMISSION**

COMES NOW Applicant, Public Service Company of New Mexico ("PNM"), and pursuant to §70-2-25, NMSA (1978) hereby submits its Application for Rehearing ("Application") relating to Order No. R-11134-A (the "Order") issued by the New Mexico Oil Conservation Commission ("OCC" or "Commission") in Case No. 12,033. In support of this Application, PNM states as follows:

1. The Commission entered its Order in the above-entitled *de novo* appeal on March 24, 2000.
2. The Order is erroneous in several respects, is not supported by law and the Commission should grant a rehearing to modify the findings and terms of its Order.

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3. Finding Nos. 27 and 29 of the Order are incorrect with respect to PNM. The evidence presented at the hearing confirms that the free product contamination at the Hampton 4M Well site ("Site") could not have originated from PNM's former dehydration pit. The source for the free product at the Site is upgradient from PNM's former operations and is in the area of Burlington's operations. The free product groundwater contamination and accompanying dissolved phase groundwater contamination are the result of Burlington's operations. Moreover, pursuant to OCD practice and internal policy, prior owners or operators of a facility are not regarded as the "responsible person" for purposes imposing liability for abatement of contamination at natural gas well sites. Therefore, under the OCD's practice and internal policy, PNM, as a former operator, is not a "responsible person" for purposes of any required activities resulting from the presence of the free product at the Site.

4. Finding Nos. 26, 30 and 32 are incorrect with respect to PNM. The undisputed evidence shows that all contaminated soils beneath PNM's former dehydration pit have been completely removed. There is no factual basis to require PNM to conduct further soil remediation. With respect to groundwater contamination at the Site, the volume of free product previously recovered by PNM is far in excess of any amounts that PNM could have released to the groundwater from its former dehydration pit under a worst case scenario. Thus, PNM has already completed remediation resulting from its activities at the Site, and has, in addition, remediated both soils and groundwater contamination that did not result from any discharges at the site. It is also undisputed that the free phase product at the Site was neither owned, generated or released by PNM. Thus, PNM had no control over the free phase product and related dissolved phase

contamination at the Site. The product is and remains the property of the producer, was discharged by the producer, and any additional remediation at the site must be the responsibility of the producer.

5. Finding Nos. 33 and 34 are incorrect with respect to PNM. As noted above, the groundwater contamination remaining at the site originated from Burlington's operations and not from PNM's discharges to PNM's former dehydration pit. The evidence presented shows that there is a continuing source for dissolved phase hydrocarbons, and indicates that the source of the dissolved phase groundwater contamination is from a continuous or intermittent source of free phase product at the Site. Because of the existence of a continuing source for contamination in the vicinity of the Hampton 4M well, from substances and operations that are not within the control of PNM, any efforts to conduct further remediation by PNM would be ineffective. Unless and until the specific release point of the contamination is located and this source is removed, it is unreasonable to require PNM to conduct further remediation in the area of the former pit. Moreover, the Commission's Order requiring PNM to submit a remediation plan ignores the fact that PNM has already submitted and received approval of its Closure Plan and Groundwater Management Program. The approval of these plans negates the requirement for a remediation plan.

6. Finding No. 35 is also incorrect with respect to PNM. Despite the Commission's finding that Burlington caused and contributed to groundwater contamination under the area of PNM's former dehydration pit, the Order places sole responsibility for oversight and reporting on PNM for any further work to be done. This is contrary to law and reason. PNM has no operations or control over the Site. Requiring

PNM to assume sole responsibility over contamination caused by Burlington is arbitrary and capricious.

7. The Commission also erred in refusing and failing to consider new and relevant evidence presented by PNM following the hearing in this matter. The new evidence, in the form of test results from recently installed monitoring wells at the Site, revealed significant volumes of free product in the area of Burlington's operations at the Site, substantially upgradient from PNM's former operations at the site. This further confirms that groundwater contamination at the site resulted from the free product released by Burlington, and that the contamination originated in the area of Burlington's operations and not in the area of PNM's former operations. The Commission's denial of PNM's motion to submit the new evidence was arbitrary and capricious.

8. The Commission has refused to apportion relative responsibility for the remediation of the Site based upon the quantities of contaminants released by each of the potentially responsible parties, but has instead insisted upon apportioning responsibility based upon a "geographic allocation." The practical effect of the Commission's method of apportionment places the lion's share of the responsibility for cleanup upon PNM, rather than upon Burlington, who released all or most of the contaminants affecting the groundwater at the Site. This method of apportionment is arbitrary and capricious, not supported by the evidence in the record, and contrary to law.

9. The Commission's directives in the Order are based upon erroneous and legally defective grounds.

10. Based upon the foregoing, PNM respectfully requests that the OCC grant the following relief:

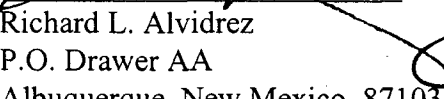
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- a. Schedule a hearing before the OCC to consider PNM's Application in this matter;
- b. Stay the OCC Order pending a determination on PNM's Application;
- c. Declare that all soil contamination in the area of PNM's former pit has been remediated and that PNM shall have no further responsibility for soil contamination at the Site;
- d. Declare that PNM is not a responsible person for any free product underlying the Site or for the associated dissolved phase product in the vicinity of the Site;
- e. Grant PNM closure for its former unlined pit at the Site and relieve PNM of any further responsibility for investigation and remediation at the Site
- f. Grant such other relief as the OCC deems proper.

Respectfully submitted,

KELEHER & McLEOD, P.A.

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

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OIL CONSERVATION DIV

**IN THE MATTER OF THE HEARING CALLED
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NEW MEXICO**

De Novo
CASE NO. 12033
Order No. R11134-A

CERTIFICATE OF SERVICE

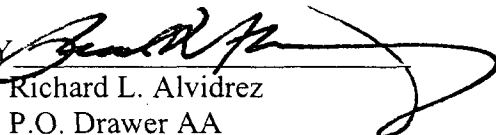
THIS WILL CERTIFY that a true and correct copy of the Application of Public Service Company of New Mexico for Rehearing in the above matter was mailed, this 12th day of April, 2000 to the following counsel of record:

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