

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 YATES PETROLEUM )  
CORPORATION FOR AN ORDER (1) DIRECTING )  
PRIDE ENERGY COMPANY TO REIMBURSE YATES )  
FOR THE WELL COSTS INCURRED BY YATES IN )  
ITS ATTEMPT TO RE-ENTER THE STATE "X" )  
WELL NUMBER 1 (API NO. 30-025-01838), )  
LOCATED IN SECTION 12, TOWNSHIP 12 )  
SOUTH, RANGE 34 EAST, NMPM, PRIOR TO )  
THE TIME PRIDE ENERGY COMPANY ASSUMED )  
OPERATIONS OF THE WELL, (2) DIRECTING )  
PRIDE ENERGY COMPANY TO ACCOUNT FOR )  
AND PAY ALL SUMS IT IS NOW IMPROPERLY )  
HOLDING PURSUANT TO EXPIRED ORDERS OF )  
THE DIVISION AND COMMISSION, AND (3) )  
REQUIRING PRIDE ENERGY COMPANY TO PLUG )  
AND ABANDON THE STATE "X" WELL NUMBER 1, )  
LEA COUNTY, NEW MEXICO )

CASE NO. 13,531  
de novo

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

August 16th, 2007  
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, August 16th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
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## I N D E X

August 16th, 2007  
Commission Hearing  
CASE NO. 13,531

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\* \* \*

## A P P E A R A N C E S

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:15 a.m.:

3           CHAIRMAN FESMIRE: At this time let's call the  
4   Thursday, August -- it is August -- August 16th meeting of  
5   the New Mexico Oil Conservation Commission to order. Let  
6   the record reflect that Commissioner Bailey, Commissioner  
7   Olson and Commissioner Fesmire are all present. We  
8   therefore have a quorum.

9           At this time we will review the minutes of the  
10   prior meeting. Have the Commissioners had the opportunity  
11   to look over the minutes as presented by the Secretary?

12           COMMISSIONER BAILEY: Yes, I have, and I move  
13   that we adopt them.

14           COMMISSIONER OLSON: I'll second that.

15           CHAIRMAN FESMIRE: All those in favor, signify by  
16   saying aye.

17           COMMISSIONER BAILEY: Aye.

18           COMMISSIONER OLSON: Aye.

19           CHAIRMAN FESMIRE: Let the record reflect that  
20   the motion carried. The minutes are being signed by the  
21   Chairman and handed to the secretary.

22                           \* \* \*

23  
24           CHAIRMAN FESMIRE: The first case before the  
25   Commission today is Case Number 13,531, the *de novo*

1 Application of Yates Petroleum Corporation for an order  
2 directing Pride Energy Company to reimburse Yates for the  
3 well costs incurred by Yates in its attempt to re-enter the  
4 State "X" Well Number 1, located in Section 12, Township 12  
5 South, Range 34 East, NMPM, prior to the time that Pride  
6 Energy Company assumed operations of the well, and (2)  
7 directing Pride Energy Company to account for and pay all  
8 sums it is now improperly holding pursuant to expired  
9 orders of the Division and Commission, and (3) requiring  
10 Pride Energy Company to plug and abandon the State "X" Well  
11 Number 1 in Lea County, New Mexico.

12 This case has had a long and convoluted history.

13 At this time we'll take entry of appearance for  
14 the counsel in the case.

15 MR. BRUCE: Mr. Chairman, Jim Bruce of Santa Fe,  
16 representing Pride Energy Company.

17 MR. CARR: May it please the Commission, my name  
18 is William F. Carr with the Santa Fe office of Holland and  
19 Hart, L.L.P. We represent Yates Petroleum Corporation in  
20 this matter.

21 CHAIRMAN FESMIRE: Okay. I understand that there  
22 has been an agreement as to the procedure in this case.  
23 Mr. Bruce, would you be so kind as to --

24 MR. BRUCE: Mr. Chairman --

25 CHAIRMAN FESMIRE: -- the Commission?

1 MR. BRUCE: -- the parties, Mr. Carr and I -- and  
2 I don't have it in front of me right now -- did prepare and  
3 submit to the Commission an agreed statement of facts. And  
4 then we have each submitted hearing memoranda, which are in  
5 the Commission's file.

6 And I do have a brief presentation. Other than  
7 that, if the Commission has any questions, I do not plan on  
8 spending much time on this matter.

9 CHAIRMAN FESMIRE: Mr. Carr, is that your  
10 interpretation of where the case stands right now?

11 MR. CARR: My interpretation of Mr. Bruce is that  
12 he won't spend much time on this matter. Yes, sir.

13 CHAIRMAN FESMIRE: Mr. Bruce, are you prepared to  
14 begin then?

15 MR. BRUCE: Yes, Mr. Chairman. As you  
16 referenced, I believe this is the longest-running soap  
17 opera before the Division and the Commission at this time.

18 A couple of preliminary matters.

19 As you know, the re-entry has been attempted  
20 twice. Both failed. Part of this case I noted in the --  
21 as you read it, is the plugging and abandoning of the  
22 well. And Pride has informed me that they will indeed plug  
23 and abandon the well. The last operations in the well took  
24 place sometime this middle or late spring.

25 Secondly in this case, Yates sought two things.

1 It sought approximately \$84,000 in actual well costs  
2 incurred by Yates before October 7, 2004. And it also  
3 sought approximately \$32,000, which was the amount Yates  
4 paid to Pride when it voluntarily joined in the first re-  
5 entry attempt. And that amount -- the actual well costs  
6 incurred at that point were less than the AFE, so it was a  
7 refund of the amounts voluntarily paid. Pride is not  
8 contesting anything regarding that \$32,000. What we're  
9 looking at is the \$84,000-plus.

10 And what is at issue is -- just so I've got it  
11 accurately -- the Division ordered Pride to pay Yates  
12 \$84,391.58. Pride contested \$25,442.21 of those costs, and  
13 that amount is set forth in Pride's hearing memorandum.  
14 And so what Pride thinks is the actual amount at issue  
15 comes out to \$58,949.37. Pride is asking that the  
16 Commission disallow that \$25,000-plus.

17 And really to get to the heart of the matter, two  
18 things. First of all, the Division Order, R-12,547,  
19 initially said, well, Pride cannot raise these matters  
20 because it did not timely object to the well costs.

21 I have attached to Pride's written argument as  
22 Exhibit 1 a copy of a letter submitted to the Division on  
23 December 15, 2004, which was within the time frame  
24 permitted under the -- As you know, there are a number of  
25 orders in this matter. And so first of all, Pride did



1 timely object, contrary to what is stated in the Division  
2 order.

3 In its hearing memorandum, Yates does concede  
4 that duplicate costs were incurred, and Mr. Carr does  
5 accurately state or phrase the issue. Who pays twice?

6 I would submit that if someone should pay twice,  
7 it's Yates for several reasons.

8 First, if you'll remember back in 2003 when this  
9 began -- Well, let's go back in time. Yates had an APD for  
10 this particular re-entry going back, I believe, to 2001.  
11 In 2002 it renewed that APD for the re-entry, but it let it  
12 expire.

13 Pride went and obtained an APD for the re-entry.

14 Then -- and it's always been uncertain, but the  
15 Hobbs District Office was somehow approached by Yates, and  
16 it unilaterally without notice to Pride revoked Pride's APD  
17 and reinstated Yates' APD.

18 Now Pride had sent written offers to Yates  
19 regarding the formation of a west-half unit, which is what  
20 the Division and the Commission finally approved, and it  
21 commenced pooling proceedings. After they were commenced,  
22 Yates, knowing that pooling was in the offing, went out  
23 unilaterally and started work on this well.

24 Under these facts, we believe the duplicate costs  
25 unilaterally incurred by Yates should be borne by Yates,

1 not by Pride, or at least not 50-50. They should be  
2 unilaterally borne by Yates. We think that is the only  
3 fair thing to do. If Yates had withheld from taking any  
4 action on the re-entry of this well, it would not -- no one  
5 would have incurred those \$25,000-plus in costs, and we  
6 think that's the only fair thing to do.

7 The pooling statute talks in terms of costs, well  
8 costs, which should be reasonable, not in excess of what  
9 are actual. And we believe that although in the abstract  
10 the costs incurred by Yates, that \$25,000-plus, were  
11 reasonable costs normally borne by a working interest owner  
12 in the drilling or re-entry of a well, they are not  
13 reasonable by the fact that they could have been totally  
14 obviated if Yates hadn't taken this unilateral action.

15 That's our basic position, and I pass it to Mr.  
16 Carr.

17 CHAIRMAN FESMIRE: Mr. Carr?

18 MR. CARR: May it please the Commission,  
19 initially there are a couple of factual things I think need  
20 to be clarified or expanded on.

21 Yates did have an APD, the APD did expire, and as  
22 soon as the APD expired back in 2003, I believe, Pride  
23 filed and got its own APD. It gave no notice to Yates.

24 Yates approached the OCD, and how they did it is,  
25 they filed a new APD. And that was approved by the

1 District Office, and the District Office then canceled the  
2 prior-issued APD to pride.

3 It's a false issue to suggest that Yates was  
4 running out and not giving notice. They filed an APD.

5 Pride filed its APD, it didn't give notice to  
6 Yates. That is not a valid issue in the case.

7 And then to come in here and suggest that knowing  
8 the pooling action was pending and everything, Yates went  
9 out and commenced the well -- I think if you look at the  
10 record, you will see on September the 5th, 2003, Yates  
11 moved its rig onto location to re-work the well. That was  
12 September the 5th.

13 And the Pride application for compulsory pooling  
14 was filed five days later. They could not have been on  
15 notice of the pending pooling matter when they moved on,  
16 because it wasn't filed until five days after the rig was  
17 moved onto location, and that's in the record.

18 This case today presents two issues. They  
19 involve the reimbursement of certain costs that this  
20 Commission has twice ordered Pride to refund to Yates. As  
21 Mr. Bruce said, they're not challenging the reasonableness  
22 of the dollar amounts; it's just this question of costs  
23 that were incurred twice, and how will those be paid?

24 And Mr. Bruce said I correctly stated the issue,  
25 and I did not. It's -- neither -- we're not -- they're not

1 going to, either side, pay the costs twice. They're going  
2 to incur it once, and then they're going to split it the  
3 second time, and so it's the 50-50 split on the overpayment  
4 that we're really talking about.

5 But if you'll look at the facts -- and I think  
6 they're simple, if you just lay out what really is on the  
7 table -- there was a well on the Yates lease, and Yates  
8 wanted to re-enter it. And they were re-entering it  
9 pursuant to a Division-approved APD when Pride sought an  
10 order removing them as operator and turning operations over  
11 to Pride.

12 When I saw this I laughed, because since you  
13 allow two wells on 320 and our well is in the center of our  
14 own lease, we were surprised that they would do it, and we  
15 were, I must say, surprised when you agreed. But you did  
16 agree, and you canceled Yates' APD. You designated Pride  
17 operator of the well, and the orders that you twice entered  
18 provided that Pride would reimburse certain costs to Yates.

19 It is because of this fact situation that these  
20 costs were incurred twice. Had we not been removed, had  
21 they not filed a pooling order after we were on location,  
22 then in fact the costs would not have been incurred twice.  
23 Twice you determined that those costs would be borne by  
24 Pride. They are the party who you authorized to enter the  
25 well, and it was that act that caused the double -- these

1 double costs, like insurance, things of that nature.  
2 They're set out in our material.

3 When Pride commenced its re-entry operations, it  
4 knew you were telling them to reimburse these costs. And  
5 it was unsuccessful in that attempt. We participated in  
6 that attempt.

7 And then they let their order expire, and they  
8 had to come back and try and pool again, as part of this  
9 soap opera. And we came in and we objected to being pooled  
10 again until the issues involved in the first pooling were  
11 resolved. And we said, There is this cost issue standing  
12 out there.

13 And so what did they do? They paid us. They  
14 paid us to remove that issue so we could come back to the  
15 Division, and they could get another pooling order. But  
16 now they want to challenge and take back part of what they  
17 paid at that time.

18 When you read the brief that was filed, the  
19 hearing memorandum that was filed in this case, it appears  
20 to me that Pride -- its only argument is that Section  
21 70-2-17.C of the Oil and Gas Act provides, and they say,  
22 The Division may only award, quote, actual expenditures  
23 required...not in excess of what is reasonable. And they  
24 say that because of this, you couldn't award these costs to  
25 Yates because they don't fall within that actual

1 expenditure required provision.

2 I'd like to show you that statute. I've  
3 highlighted on the second page the portion of the statute  
4 that is quoted, and I think when you read the whole  
5 sentence it says something a little different. It's  
6 talking about pooling orders.

7 It says, Such pooling order of the Division shall  
8 make definite provision as to any owner or owners who  
9 elects not to pay his proportionate share in advance for  
10 the *pro rata* reimbursement solely out of production to the  
11 parties advancing the costs of development and operation,  
12 which shall be limited to the actual expenditures required  
13 for such purposes not in excess of what are reasonable...

14 This sentence isn't talking about a situation  
15 like this. It is talking about where somebody goes  
16 nonconsent in a well. In this case, Yates didn't go  
17 nonconsent, it participated. And this provision and this  
18 section of the Statute does not apply to the facts of the  
19 case.

20 Go back to the first page, please, and you'll see  
21 the paragraph at the bottom says, All orders effecting such  
22 pooling shall be made after notice and hearing and shall be  
23 upon such terms and conditions as are just and reasonable  
24 and will afford to the owner or owners of each tract or  
25 interest in the unit the opportunity to recover or receive

1 without unnecessary expense his just and fair share of the  
2 oil or gas or both.

3 I submit that the orders that you entered were  
4 consistent with this statement, because we believe what you  
5 did was enter an order on terms and conditions that were  
6 just and reasonable, based on the facts.

7 And when you go on and talk about tying this to,  
8 you know, unnecessary expense, well, this expense was  
9 necessary once the Division granted Pride's Application,  
10 removed us as operator, placed operatorship in Pride and  
11 some costs had to be re-incurred by Pride. But for that  
12 action, these costs wouldn't have been incurred. But they  
13 were necessary once the Division changed the direction it  
14 was authorizing us to go in terms of the efforts to  
15 redevelop the property.

16 So it seems to me the question is right where it  
17 was when we were here before. The question is, was it just  
18 -- were your actions requiring that Pride reimburse these  
19 costs actions that were just and reasonable? And we submit  
20 that they were. And we're right back where we were.

21 The other issue that they raise relates to  
22 attorney's fees. And while Mr. Bruce didn't argue it, it  
23 is in his brief. And all we would do is point you to the  
24 order, R-12,547, Finding 20, and the Division found New  
25 Mexico adheres to the so-called American Rules that absent

1 statute or other authority, litigants are responsible for  
2 their own attorney's fees.

3 Now in their brief they blame you and they blame  
4 us for the fact that these costs had to be incurred. But  
5 there's no showing anywhere of any statutory authority for  
6 requiring now that Yates has to pay Pride's costs as well  
7 as our own.

8 In this soap opera, what I called a fiasco,  
9 Pride's written argument starts out by saying, This hearing  
10 brings to an end the matters related to the 205 [sic] re-  
11 entry of the State "X" Well Number 1. I hope that's true.  
12 But if you look at next week's docket, we have a case on  
13 that docket seeking an order directing Pride Energy to plug  
14 and abandon the State "X" Well Number 1, and although they  
15 say they're going to, we yet have seen any action to do  
16 that.

17 From the beginning we thought this case was  
18 simple, and from the beginning I've been proven wrong at  
19 every step of the way. And basically it just seems to us  
20 that we wanted to re-enter a well on our own lease. We  
21 were doing it pursuant to your APD. At Pride's request we  
22 were removed twice, the acreage was pooled to let them re-  
23 enter, twice they failed.

24 And now we even have to come back and ask the  
25 Division to push them so that -- plug the well and clean up



1 the mess on our lease. They knew they were going to pay  
2 these costs when they first re-entered the well, when we  
3 were participating. They paid these costs to us so we  
4 could get to a second pooling hearing after they let their  
5 order expire, and now they don't want to pay.

6 And the only question, we think, is, isn't it  
7 just and reasonable for Yates -- is it just and reasonable  
8 for Yates to be required to pay these costs that, but for  
9 the actions of Pride and the approval of the Division,  
10 would never have been occurred -- would never have been  
11 incurred.

12 So we ask the Commission to tell Pride now for  
13 the third time that they've got to reimburse Yates for the  
14 actual costs incurred in conducting re-entry operations on  
15 the State "X" Well Number 1 after August 25, 2003, and  
16 prior to October 7, 2004. And we believe if you will do  
17 that, you will again be entering an order that based on  
18 these facts is just and reasonable.

19 CHAIRMAN FESMIRE: Rebuttal, Mr. Bruce?

20 MR. BRUCE: I think Mr. Carr stated it a couple  
21 of times, but Pride has paid Yates. Pride sent a check to  
22 Yates, a hundred and -- I forget the exact amount,  
23 \$116,000. So that has been paid. That was paid well over  
24 a year ago.

25 So the issue is, what of that \$84,000 listed in

1 ordering paragraph 3 of R-12,547 is reasonable? Is it the  
2 \$84,000, or is it the \$84,000 less the \$25,000 contested by  
3 Yates?

4 We do believe that once that matter is decided,  
5 then under -- and we believe the Commission order should  
6 contain a provision like in Paragraph 15 of Order R-21,547  
7 [sic]. Once the final amount is determined, Pride will  
8 invoice Yates for the additional final amount, and it will  
9 be split 50-50 because I think regardless the parties can  
10 only pay -- are each only liable, and can only be liable  
11 under statute, for 50 percent of the final well costs which  
12 are determined to be reasonable by the Commission.

13 And although I may have quoted the wrong part of  
14 the Statute, both the provision cited by Mr. Carr and by me  
15 state that they have to be reasonable well costs.

16 And despite Mr. Carr's attempt to make it look  
17 like it was Pride who was the evildoer in this matter,  
18 Yates all along, like I said, unilaterally went to the  
19 Division in Hobbs without Pride's knowledge. Pride never  
20 even received a notice from the Hobbs office until Yates  
21 recommenced -- or I should say commenced, operations re-  
22 entering the well.

23 And that is why Pride did not file its pooling  
24 application until after. Its field hand -- it's in the  
25 record -- it's field hand went out to the site, saw Yates

1 re-entering and said, What's the deal? We've got an APD on  
2 this well. Only then did they call the Hobbs District  
3 office, and the Hobbs District office faxed a letter  
4 allegedly written to Pride, never received, telling Pride  
5 that its APD had been revoked. This is not Pride's fault  
6 in this matter.

7 And that is the basic issue, and I submit it to  
8 the Commission. And if they have any questions, that's  
9 fine.

10 CHAIRMAN FESMIRE: Commissioner Bailey, do you  
11 have any questions of any of the attorneys?

12 COMMISSIONER BAILEY: No, I don't.

13 CHAIRMAN FESMIRE: Commissioner Olson?

14 COMMISSIONER OLSON: I don't think so.

15 CHAIRMAN FESMIRE: Mr. Bruce, the amounts that  
16 we're talking about are those set out in paragraph -- in  
17 the first ordering paragraph on R-12,547; is that correct?

18 MR. BRUCE: Let me make sure. The --

19 CHAIRMAN FESMIRE: Actually the third order.

20 MR. BRUCE: Third, yes. As I said, that  
21 \$32,204.11, that is not at issue. That was what Yates had  
22 overpaid in the first re-entry. Pride has refunded that to  
23 Yates. That is not at issue.

24 What is at issue is part of the \$84,000-plus.

25 CHAIRMAN FESMIRE: Amounting to \$25,000 -- How

1 much?

2 MR. BRUCE: \$25,000 -- if you'd go to -- if you  
3 have Pride's written argument in front of you and you went  
4 to Exhibit 1, which is my -- Well, I might not have  
5 numbered these appropriately.

6 Behind Exhibit 1 is Yates' final schedule of  
7 actual well costs, and this is provided -- this was  
8 provided by Yates, and it totals \$84,391.58.

9 CHAIRMAN FESMIRE: Right.

10 MR. BRUCE: And then if you go to Exhibit 2  
11 attached to Pride's memorandum, there is a listing attached  
12 to that letter dated September 30th, 2005, to Mr. Carr in  
13 which it lists specifically the \$25,442.21, which Pride  
14 contests.

15 So I think what you come to is, the final issue  
16 is this: If it's \$84,000 that the Commission determines is  
17 proper, then Pride will invoice Yates for one-half of that  
18 amount as the actual well costs.

19 If you accept Pride's position, then the amount  
20 of actual well cost is \$84,000-plus, minus that \$25,000-  
21 plus, for approximately \$59,000.

22 CHAIRMAN FESMIRE: But the amount in question is  
23 the duplicated cost, right? The twenty-five thousand --

24 MR. BRUCE: Correct.

25 CHAIRMAN FESMIRE: -- four hundred forty-two

1 dollars?

2 MR. BRUCE: What Pride is asking is that \$25,000-  
3 plus be -- deduct -- as reasonable well costs, be deducted  
4 from that \$84,000 amount.

5 CHAIRMAN FESMIRE: Okay, so has Pride already  
6 invoiced and been paid by Yates for the difference between  
7 the \$84,000 and the \$25,000?

8 MR. BRUCE: No, it has not, because -- I thought  
9 it was fruitless until this matter was finally decided.

10 CHAIRMAN FESMIRE: Okay, but they're not  
11 contesting it, and Yates has indicated that they will pay  
12 one-half of the difference between the \$84,000 and the  
13 \$25,000?

14 MR. BRUCE: That's what the order provides,  
15 paragraph 15 of Order R-12,547, whatever amount is finally  
16 determined by the Division or Commission to be reasonable,  
17 invoiced. And since each party owned 50 percent of the  
18 well, each party would be liable for 50 percent, is the way  
19 I read the order.

20 CHAIRMAN FESMIRE: Okay, so they're not in --  
21 they're not contesting the \$84,000 less the \$25,000? All  
22 that's in contest here are the duplicated costs, \$25,000  
23 the difference between Pride paying half -- paying the full  
24 cost -- I mean, Yates paying the full cost --

25 MR. BRUCE: I think the difference, looked at

1 this way -- and Mr. Carr can correct me if I'm wrong -- is  
2 Pride liable for half of \$84,000? Or is it liable for half  
3 of \$59,000, approximately, which would be 84 minus 25.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: So that then Yates would be  
6 liable for 100 percent of the \$25,000 --

7 MR. BRUCE: That is what -- that's --

8 MR. CARR: That's what he's asking.

9 COMMISSIONER OLSON: Right.

10 CHAIRMAN FESMIRE: And those costs were incurred  
11 by Yates, correct?

12 MR. BRUCE: They were incurred by Yates, we do  
13 not dispute. There's no dispute about that.

14 MR. CARR: Those costs were incurred by Yates  
15 prior to the time we were told to get off the well.

16 CHAIRMAN FESMIRE: Okay, and what we're trying to  
17 decide here is whether or not Yates --

18 MR. CARR: The question is whether or not Pride  
19 should reimburse those costs to Yates. In other words,  
20 those costs are assumed by Pride alone.

21 CHAIRMAN FESMIRE: Okay, and given credit in the  
22 billing that's to come from Pride to Yates; is that  
23 correct?

24 MR. BRUCE: The way -- Yes, if I understand what  
25 you're saying. Pride's point is that duplicate costs are

1 not reasonable costs. And Mr. Carr's point, if I may  
2 paraphrase him, is that these were anticipated by the prior  
3 order, and since they are normally reasonable well costs,  
4 they are reasonable well costs.

5 COMMISSIONER OLSON: I guess and then in  
6 addition, Pride is asking for the additional \$15,000 in  
7 attorney's costs as well?

8 MR. BRUCE: Yes.

9 COMMISSIONER OLSON: Okay. I have one more  
10 question.

11 CHAIRMAN FESMIRE: Go ahead.

12 COMMISSIONER OLSON: Are the costs -- I saw you  
13 had the -- attached to your written argument, the December  
14 15th, 2004, letter which listed objections to costs, those  
15 appear to be different than the costs that make up the  
16 \$25,000 figure; is that correct?

17 MR. BRUCE: That is correct, Mr. Commissioner.  
18 And the reason why is that Pride had a deadline of December  
19 15th, 2004, to object to well costs. And these are the  
20 ones that we thought at the time -- Now subsequent to that,  
21 the parties exchanged documents. I think each party  
22 subpoenaed the other, although they voluntarily turned over  
23 all the documents to verify what was reasonable and what  
24 was not.

25 I think -- I mean, I think if you look at the

1 amounts, they come out pretty close to each other. I mean,  
2 if you wanted to use one or the other, that's not a big  
3 issue, although this was -- the December, 2004, letter was  
4 based on our knowledge at the time, without a review of  
5 Yates' invoices, et cetera, and Pride also subpoenaed all  
6 of -- I mean Yates also subpoenaed all of Pride's invoices  
7 and checks, et cetera, to verify that the well costs were  
8 actually incurred.

9 MR. CARR: You can make it very complicated by  
10 trying to sort out number by number, item by item. But the  
11 issue is very simply, who is going to pay these double  
12 costs?

13 If you don't -- If you reverse what you've done  
14 before, that means for this fiasco Yates pays its insurance  
15 costs and all these items listed, and then it also pays  
16 half of those costs again because you gave it to Pride.

17 And when you initially decided this you said, All  
18 right, you take operations, and you reimburse them the  
19 costs that they incurred.

20 And the one thing that really bothers me in this  
21 case are comments like, Who was evil? No one was evil in  
22 this case, and I've never said it, and there's nothing in  
23 the record that would support that kind of  
24 characterization.

25 What happened is, they filed an APD, and they



1 didn't get notice because you don't. And I didn't say that  
2 was evil. And you issued an APD, because there was none in  
3 place at the time.

4 And what did we do? We did something really  
5 evil, we did just what they did: We filed an APD. We  
6 didn't know they had theirs. And you looked at it and  
7 said, Oh, they own the land, they have the whole spacing  
8 unit, we'll cancel theirs and issue you yours.

9 And we go out and start to drill, and then boom,  
10 they find out about it and file a pooling case, and we  
11 voluntarily shut down and bring the matter here. I submit  
12 to characterize that as evil is the only evil thing going  
13 on in this hearing.

14 And the question is very simply, in that fact  
15 situation do we get to bear all these costs one and a half  
16 times when you take operations from us, a well on our tract  
17 that's only going to drain reserves from our acreage and  
18 give it to them and then say, Okay, you pay them one and a  
19 half times for all of these other costs, things you've  
20 already incurred. And by the way, you can just ante into  
21 their attorney's fees for taking you on. And that seems  
22 outrageous to me.

23 And you can muck it down in -- what number in  
24 this list and what number in this list, but the issue is,  
25 who gets hit twice? The people who you gave the well to

1 and said go, or the people that you took it away from and  
2 you say, They go and you pay one and a half times? And  
3 that's what we don't like about it.

4 CHAIRMAN FESMIRE: Mr. Bruce, what precedent is  
5 there in New Mexico or in OCD -- OCC decisions that allow  
6 Pride to collect the attorney's fees, get an order from the  
7 Commission?

8 MR. BRUCE: Well, you'll notice I cited none, Mr.  
9 Chairman.

10 CHAIRMAN FESMIRE: I did notice that.

11 MR. BRUCE: I could locate none, Mr. Chairman.

12 CHAIRMAN FESMIRE: Anything else, Commissioner?

13 COMMISSIONER BAILEY: No.

14 CHAIRMAN FESMIRE: Commissioner?

15 COMMISSIONER OLSON: I don't have any other  
16 questions.

17 CHAIRMAN FESMIRE: Would you all like to go into  
18 executive session and deliberate on this for a while?

19 let the record reflect that the Commission will  
20 go into executive session --

21 MS. BADA: You need a motion.

22 CHAIRMAN FESMIRE: Oh, I'm sorry. Is there a  
23 motion to the effect that the Commission go into --

24 COMMISSIONER OLSON: So move.

25 COMMISSIONER BAILEY: Second.

1 CHAIRMAN FESMIRE: All those in favor?

2 COMMISSIONER BAILEY: Aye.

3 COMMISSIONER OLSON: Aye.

4 MR. BRUCE: The evil Mr. Carr and I will leave.

5 MR. CARR: And if you hear loud noise in the  
6 entry hall --

7 CHAIRMAN FESMIRE: -- somebody used the word  
8 "evil".

9 And we will discuss no other matter except the  
10 matter pending before the Commission, and we will go into  
11 executive session effective now.

12 (Off the record at 9:48 a.m.)

13 (The following proceedings had at 10:00 a.m.)

14 CHAIRMAN FESMIRE: Okay, at this time we'll go  
15 back on the record. Let the record reflect that it is  
16 again 10 o'clock, that all three Commissioners are present,  
17 and that the Commission is coming out of executive session.  
18 During that session the Commission discussed nothing except  
19 the case before it in Cause Number -- 13,531 I believe is  
20 the correct number? Yes, 13,531.

21 The Commission has reached a decision in that  
22 matter.

23 The Commission finds that the \$25,442.21 was a  
24 just and reasonable cost incurred in developing this re-  
25 entry, and that each party shall bear its proportionate

1 share of those costs as ordered in R-12,547.

2 Since the Commission finds for Yates in this  
3 case, they also find that there is no precedent or  
4 authority for the allocation of attorney's fees and orders  
5 each party to bear their own such fees.

6 Is that a fair representation of the Commission's  
7 decision, Commissioner Bailey?

8 COMMISSIONER BAILEY: Yes, it does, it reflects  
9 our discussions.

10 CHAIRMAN FESMIRE: Commissioner Olson?

11 COMMISSIONER OLSON: Yes, I believe that  
12 accurately reflects our discussions.

13 CHAIRMAN FESMIRE: Okay. At this time the  
14 Commission will order Counsel Bada to draft an order to  
15 that effect, and we'll take this case up at the next  
16 regularly scheduled Commission meeting with the intention  
17 of signing that order.

18 (Thereupon, these proceedings were concluded at  
19 10:03 a.m.)

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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                  )   ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter  
and Notary Public, HEREBY CERTIFY that the foregoing  
transcript of proceedings before the Oil Conservation  
Commission was reported by me; that I transcribed my notes;  
and that the foregoing is a true and accurate record of the  
proceedings.

I FURTHER CERTIFY that I am not a relative or  
employee of any of the parties or attorneys involved in  
this matter and that I have no personal interest in the  
final disposition of this matter.

WITNESS MY HAND AND SEAL August 16th, 2007.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010