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

IN THE MATTER OF THE APPLICATION OF
EGL RESOURCES, INC.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO — CASE NO. 13049

IN THE MATTER OF THE APPLICATION OF
DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING
LEA COUNTY, NEW MEXICO — CASE NO. 13048

ORDER NO. R-11962 *De Novo*

RESPONSE TO
DEVON ENERGY PRODUCTION COMPANY, L. P.'S
MOTION TO REMAND CASES 13048 AND 13049 TO THE DIVISION FOR THE PURPOSE OF A CONSOLIDATED HEARING WITH DIVISION CASE 13085 TO CONSIDER TECHNICAL EVIDENCE

EGL RESOURCES, INC., ("EGL"), and ROBERT LANDRETH, ("Landreth"), for their Response to Devon Energy Production Company, L. P.'s Second Motion to Remand, state:

SUMMARY

By its July 17, 2003 motion, the second of its type, Devon seeks the remand to the Division of two consolidated compulsory pooling cases presently pending before the Commission that were previously heard by the Division's Examiners on April 10, 2003. Devon wishes to have the Division once again revisit the compulsory pooling cases in order to consider unspecified "technical issues". EGL/Landreth oppose Devon's 2nd Motion to Remand for the following reasons: (1) Devon's motion is vague and ambiguous. (2) A remand would violate proper procedural protocol.

Suggested solution: The Commission should continue the hearing on the compulsory pooling applications until after the Division has issued an order in Case No. 13085 and in the event a party initiates a de novo proceeding, then at that time the Commission may wish to consider whether the circumstances warrant consolidation of all three cases for a single de novo hearing.

BACKGROUND FACTS

On April 10, 2003, at a lengthy hearing on the consolidated EGL/Devon compulsory pooling applications, the Division's Examiners followed long-established practice when they closed the record in the cases and proceeded to take the matter under advisement.

On May 13, 2003, the Division entered Order No. R-11962 pooling the subject lands and designating EGL as operator. In its order, The Division noted as follows:

> *"(15) In effect, EGL's application for a 640-acre unit in Case No. 13049 seeks to expand the North Bell Lake Devonian Pool. Case No. 13049 was not filed nor advertised as an application to expand pool boundaries, nor does the evidence establish that notice of the application or the hearing thereof was given to all Division-designated operators in the pool as would be required for an application for a special pool order pursuant to Rule 1207.A(4) [19 .15.N.1207.A(4) NMAC].*
>
> *(16) The geologic and engineering testimony concerning the potential drainage radius of the well in the Devonian formation raises matters of which the Division cannot take cognizance in the context of these applications.*
>
> *(17) Accordingly, EGL's application, to the extent that it asks for creation of a 640-acre unit comprised of all of Section 4 should be dismissed, without prejudice to any subsequent application to expand the Unit in the context of an application to expand the limits of the North Bell Lake Devonian Gas Pool."*

On May 15, 2003 and May 27, 2003 respectively, EGL/Landreth and Devon filed their applications for hearing de novo of what the Division had determined was a typical compulsory pooling proceeding.

On May 23, 2003, EGL and Landreth filed their Application in Case No. 13085 to expand the North Bell Lake Devonian Gas Pool to include Sections 4 and 5, T-23-S, R-34-E. The Application was amended on June 25th to request the alternative relief of creating a new pool for Section 4. Case No. 13085 has been properly noticed and advertised and that separate matter is now set for hearing by the Division on August 21, 2003.

On May 28, 2003, EGL began workover operations on the Rio Blanco "4" well.

On approximately July 7, 2003, EGL commenced actual drilling operations on the Section 4 location with a deep drilling rig. Drilling continues to be underway.

On July 9, 2003, Devon filed its first Motion To Remand Case Nos. 13048 and 13049 to have the Division amend Order No. R-11962 to grant new relief. EGL/Landreth responded to Devon's first motion on July 15, 2003.

On July 17, 2003, Devon filed its second Motion To Remand "for the purpose of hearing technical evidence".

POINTS AND AUTHORITIES

1. Devon's Motion is Vague and Ambiguous.

The purpose of Devon's Second Motion to Remand is unclear.

In footnote No. 1 of its Second Motion, Devon points out that the Division was presented with "some 4 hours of technical testimony" at the April 10th hearing. Yet, following its own application for hearing de novo, Devon now demands the Commission

remand the cases back to the Division to hear even more "technical evidence". Devon does not identify the nature of the additional technical evidence it wishes to present and it does not explain what a replay of the compulsory pooling hearing before the Division's examiner is supposed to accomplish. Having advanced no meaningful argument or reasons for such an unusual procedure, Devon has failed to establish any grounds for its motion.

Devon does not allege that it was prevented from presenting any technical evidence in support of its application or in opposition to EGL's at the April 10, 2003 Examiner hearing. Neither does Devon contend that it will somehow be precluded from presenting evidence at a Commission hearing. It is not argued at all that Devon is somehow being denied due process. Devon received a full and fair hearing before the Division and will be afforded the same opportunity before the Commission in due course.

Devon cites to a number of orders where cases have been re-opened and we agree that it is not unusual for the Division to do so. Subsequent amendments to orders establishing special pool rules are a good example. However not a single one of the cases or orders referred to by Devon stands for the proposition for which it is cited. There is no precedent for the Commission to remand a case in the middle of a de novo proceeding to allow a party to make another pass at presenting additional evidence, technical or otherwise, before a Division Examiner. Devon's attempt to obtain "post-judgment relief" in this fashion following the entry of Order No. R-11962 is precluded by the authorities. The New Mexico Supreme Court has instructed us: *"[Rule 1-060] does not permit a party to try a lawsuit in bits and pieces, saving some evidence and withholding some*

legal theories for later submission in the event of an unfavorable outcome."[1] *Armstrong v. Csurilla,* 112 N.M. 579, 817 P.2d 1221 (1991).

Finally, Devon's demands to remand these pooling cases would seem to be precluded by the language of NMSA 1978 Section 70-2-13 which expresses that a party shall have a hearing de novo as a matter of a "right". (See, also, Rule 1220.A of the Division's Rules.) Although that "right" has been invoked by all parties to this proceeding, Devon does not explain how it is entitled to a special exemption from the statutory scheme governing the agency's hearing process.

Apart from serving as a vehicle to repeat its earlier demand for a remand, Devon's second motion is more in the nature of a reply pursuant to the points raised in its first motion. Nothing new is added to the debate. Correspondingly, EGL/Landreth incorporate the points and authorities made by them in their July 15, 2003 Response to Devon's first Motion To Remand.

Devon has utterly failed to establish any grounds for granting its motion.

2. The Commission Should Adhere to Established Protocol.

Devon's effort to remand the compulsory pooling cases back to the Division offends accepted procedural protocol and will result in substantial administrative inefficiency. Rather than simplify matters, Devon's proposal is disruptive to an orderly hearing process.

The better course would be to (1) deny both motions to remand, (2) continue the hearing de novo on the consolidated compulsory pooling applications, (3) allow the

[1] Rule 1-060 NMRA permits a party to seek post-judgment or post-order relief on a showing of mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc.

separate Case No. 13085 to go forward before the Division as noticed and advertised, and, if circumstances warrant after the issuance of an order in that case, (4) consolidate Case Nos. 13048 and 13049 with Case No. 13085 for a single de novo hearing.

This is in accord with the earlier *unopposed*[2] Motion For Continuance[3] filed by EGL and Landreth on July 2, 2003. Once again, EGL's Rio Blanco "4" well is currently drilling and it makes sense that Case No. 13085 should proceed first after the well has been completed. There is also a reasonable possibility that all of the pending cases may be rendered moot in the unhappy event the Rio Blanco well turns out to be a dry hole.

Proceeding in this fashion (1) is in accord with established procedural protocol, (2) may avoid one or more unnecessary hearings, (3) promotes administrative efficiency, (4) avoids the confusion and fragmentation resulting from a remand, and (5) does not violate any party's right to a subsequent de novo hearing in a single, subsequently consolidated proceeding.

Respectfully submitted,

MILLER STRATVERT P.A.

By: _____

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[2] Devon did not respond to efforts to ascertain concurrence or opposition to the motion.
[3] Granted for the reason of a scheduling conflict.

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 24 day of July 2003, as follows:

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