

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVA-  
TION COMMISSION FOR THE  
PURPOSE OF CONSIDERING:**

**CASE NO. 11352**

**APPLICATION OF THE NEW MEXICO  
OIL CONSERVATION DIVISION TO  
AMEND RULE 116 OF ITS GENERAL  
RULES AND REGULATIONS PERTAIN-  
ING TO THE NOTIFICATION OF  
FIRES, BREAKS, LEAKS, SPILLS AND  
BLOWOUTS.**

**APPLICATION FOR REHEARING**

Pursuant to NMSA 1978, § 70-2-25(A) and 19 NMAC 15.N § 1222, El Paso Natural Gas Company, Burlington Resources Oil and Gas Company, Amoco Production Company, and PNM Gas Service ("Affected Parties") submits this Application for Rehearing, and as grounds therefor, states:

1. The Affected Parties were parties of record adversely affected by Order No. R-10766 ("Order"), attached hereto as Exhibit 1, issued by the Oil Conservation Commission ("Commission")) in Case No. 11352.

2. The Oil Conservation Division ("Division") called a hearing "to amend Rule 116 of its General Rules and Regulations[.]" (Exhibit 2.)

3. The Division was required to give "reasonable notice" of the hearing before the Commission to amend Rule 116. NMSA 1978, § 70-2-23. Administrative orders based on unreasonable or "inadequate" notice are void. Nesbit v. City of Albuquerque, 91 N.M. 455, 459 (1977). Notices are "inadequate" if they are

"misleading . . . to the average citizen[.]" Id. Moreover, an amended administrative rule will be "declared invalid" where the amendment "is so fundamentally different from rule originally proposed as to amount to a new proposal." 2 Am.Jur. Administrative Law § 203 at 223 (2nd Ed. 1994).

4. The notice regarding the amendment to Rule 116 was inadequate, because the final amendment adopted by the Commission is fundamentally different from that initially proposed. Prior to the October 29, 1996, a copy of the proposed amendment was attached to the Commission's docket, (Exhibit 2), and also provided to interested parties. (Exhibit 1.) This initial proposal would have required "immediate verbal notice" and "timely written notice" to the Division of only "for release of any volume natural gas" that "results in a fire; . . . may with reasonable probability endanger public health; or . . . result in substantial damage to property or the environment." (Exhibit 3.) Unlike the initial proposal, the final amendment includes reporting requirements based on specific volumes of released natural gas. It requires both immediate verbal notice and timely written notice for releases of natural gas "in excess of 500 mcf." (Exhibit 1.) It also requires written notice for releases of natural gas between 50 and 500 mcf. (Exhibit 1.) Thus, in comparison to the initial proposal, the final amendment substantially changes the Affected Parties' reporting obligations and, in effect, amounts to a new proposal.

5. The notice regarding the amendments to Rule 116 also mislead the Affected Parties and the public. The initial proposal would have based reporting requirements for unauthorized releases of natural gas exclusively upon the actual or

probable harm caused by release. No notice was given that reporting requirements would also be based upon the specific volumes released. Further, since accidentally released volumes of natural gas are virtually unmeasurable, the Affected Parties had no reason to believe that the Commission would adopt reporting requirements based upon released volumes.

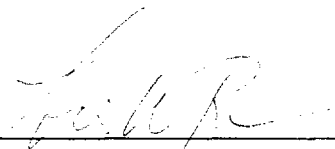
6. Because inadequate notice, the Affected Parties were caught by surprise and were prejudiced in their ability to present evidence and testimony in support of the initial proposal.

WHEREFORE, the Affected Parties request the Commission to rehear the natural gas reporting requirements of Rule 116.

Respectfully submitted,

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By

  
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### CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Application for Rehearing to be mailed and/or hand-delivered on this 5th day of March, 1997 to the following:

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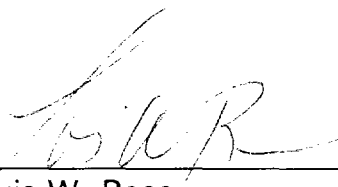
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