BEFORE THE

OIL CONSERVATION COMMISSION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

IN THE MATTER OF THE APPLICATION OF
BURLINGTON RESOURCES OIL & GAS COMPANY
FOR COMPULSORY POOLING AND A NON-STANDARD
GAS PRORATION AND SPACING UNIT, SAN JUAN
COUNTY, NEW MEXICO

CASE NO. 11808
CASE NO. 11809
(Consolidated)
De Novo

TOTAL'S MOTION TO COMPEL

Total Minatome Corporation, ("Total"), moves pursuant to 19 NMAC 15.N1211 of the Rules of the New Mexico Oil Conservation Commission for entry of an order compelling Burlington Resources Oil and Gas Company ("Burlington") to comply with the subpoena duces tecum issued on October 31, 1997 in this proceeding. In support, Total states:

1. In April of 1997, Burlington initiated the permitting process for the drilling of two Pennsylvania formation wells located in Section 8 (the Marcotte No. 2 Well) and Section 9 (the Scott No. 24 Well). Initially the wells were permitted as 160-acre wells under the then applicable state-wide rules for wildcat gas wells. Subsequently, pursuant to an application brought by Burlington in a separate proceeding, the Commission entered Order No. R-10815 establishing 640-acre spacing for sub-Dakota formation wells within certain areas of the San Juan Basin. Burlington accordingly amended its APD's and other regulatory filings for the Marcotte No. 2 and the Scott No. 24 wells as 640-acre wells.

2. Simultaneously, on April 22, 1997, Burlington made its proposal to drill the Marcotte No. 2 well to Total and a number of other interest owners in Section 8. Accordingly, on May 23, 1997, Total provided its express consent to participate in the Marcotte No. 2 Well

under the terms of a pre-existing land contract (the GLA-46 Agreement) between Total's predecessor and Burlington's predecessor. Total similarly agreed to participate in the Scott No. 24 Well on May 23, 1997. Total's consent under the GLA-46 Agreement was done in a manner consistent with numerous other well proposals made by Burlington and its predecessors in which Total participated under the GLA-46. Surprisingly, Burlington subsequently advised that it regarded Total's consent to voluntarily participate in the wells under the GLA-46 Agreement as being ineffective. Burlington, disavowing the GLA-46 Agreement, then proceeded to force pool Total's interests. In view of Total's election to participate under the terms of its pre-existing land contract with Burlington, Total quite naturally resisted Burlington's compulsory pooling applications.

3. Total Minatome Corporation entered its appearance in the Division compulsory pooling cases on July 1, 1997 and on the next day had the Director of the NMOCD issue a subpoena duces tecum compelling Burlington to produce documents and materials pertinent to issues in these particular pooling proceedings.[1] Subsequently, on July 7, 1997, Burlington filed a Motion To Quash the subpoenas issued at the behest of both Total and other working interest owners who were also parties to the compulsory pooling proceedings. On July 8, 1997, Total filed its Motion to Dismiss. Because of the pendency of the Total Motion to Dismiss the outstanding subpoena, and the Burlington Motion to Quash, and in view of the imminent hearing on July 10th, Total filed a Request For Continuance on July 2, 1997. On July 9, 1997, NMOCD counsel advised all counsel of record that the Burlington Motions to Quash would be granted and

[1]Significantly, on July 5, 1997, Burlington commenced drilling on its Section 9 well before the examiner hearing on its compulsory pooling applications.

the request that the case be continued would be denied. No hearing was held on the Burlington motion to quash and the denial of the continuance request was made in a manner inconsistent with long-standing agency practice. Consequently, Total was compelled to proceed to hearing at the Division Examiner level on July 10, 1997 without being afforded the opportunity to review the Burlington documents .

4. Following the Division's issuance of Orders R-10877 and R-10878, Total filed its Application For Hearing *De Novo* in the consolidated cases on October 7, 1997. On October 31, 1997, the Director issued a second subpoena duces tecum (the "October Subpoena") at the request of Total, substantially similar to the July subpoena issued at the Examiner level. The October subpoena called for Burlington to produce its documents and materials on November 12, 1997. Soon thereafter, on November 10, 1997. Burlington filed its motion to quash the October subpoena and, absent any ruling thereon by the Commission, did not attend the November 12, 1997 document production. Total filed its Response to Burlington's Motion To Quash, on November 29, 1997.

In the interim, Total took the initiative and, through its counsel, sought to effect a compromise of the discovery dispute in order to provide for the timely production of documents sufficiently in advance of the Commission hearing to allow for adequate preparation. See correspondence between Total and Burlington's counsel dated November 5, 1997, November 10, 1997, November 11, 1997 and November 18, 1997, Exhibits, 1, 2, 3 and 4.. (The efforts to compromise the discovery matter are further chronicled in the attachment to Total's response to

Burlington's Motion To Quash Subpoena, dated November 21, 1997.) As is apparent, Burlington failed to reciprocate Total's efforts.

The Commission scheduled the *de novo* hearing in this matter for December 11, 1997. On December 1, 1997, because of Burlington's ongoing disobedience to the October subpoena and because the discovery dispute remained outstanding, Total filed a Motion For Continuance. By letter ruling dated December 3, 1997, (Exhibit 5), the Director granted the motion for continuance and held a further ruling on the Burlington Motion To Quash in abeyance pending further negotiations between counsel to work out the discovery dispute. The Director's letter ruling made clear that counsel were expected to work together to resolve the discovery issues. Accordingly, on December 4, 1997, Total's counsel wrote to Burlington's counsel to suggest a schedule of dates by which to convene a meeting to discuss the discovery matter and to set a target date for the actual production of documents in advance of the hearing. (Exhibit 6)

5. Subsequently, on December 15, 1997, a meeting was convened to discuss the materials sought by the subpoena. At the meeting, it was immediately apparent that Burlington's counsel attended without any authority to negotiate a compromise. Instead, it was represented that any decision to produce any of the materials identified in the subpoena would be deferred to Burlington's management. Since that time, nothing further has been heard from Burlington and not a single document has been produced. Moreover, Burlington's counsel has failed to return our telephone calls seeking to follow-up on the matter.

6. Without exception, all of the materials sought by the October subpoena are directly pertinent to issues lawfully before the Commission in this consolidated *de novo* proceeding. (See

Section 70-2-8, N.M. Stat. Ann. 1978). Consequently, Total is entitled to their production. The arguments and authorities supporting Total's position in this regard are set out more fully in Total's Response to Burlington's Motion To Quash dated November 21, 1997 and are incorporated by reference. However, Burlington's continuing disobedience of the Commission's October subpoena and its chronic disregard for the efforts to effect a compromise of the discovery dispute places questions of its good faith at issue. Moreover, the ongoing delays occasioned by Burlington further prejudice Total's ability to adequately prepare for the *de novo* hearing of this matter.

WHEREFORE, the Commission should end Burlington's disobedience of the October subpoena and require the immediate and unconditional production of the requested materials.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

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Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was mailed to counsel of record on the 8 day of January, 1998, as follows:

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November 5, 1997

PLEASE REPLY TO SANTA FE

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BY HAND DELIVERY

Re: NMOCD Case No.s 11808 and 11809 (De Novo); Application of Burlington Resources Oil and Gas Company For Compulsory Pooling, San Juan County, New Mexico

Dear Tom:

I have received the Burlington Response to Total Minatome Corporation's Second Motion For Stay. In this regard, I believe it is incumbent on counsel and the parties to make a good faith effort to compromise their differences on a particular matter rather than ask the Division or Commission to settle each and every dispute that may arise during the course of a proceeding. Accordingly, please regard this as Total's invitation to Burlington to effect an interim compromise of the election participation/well data confidentiality issue.

The present dispute may be briefly summarized as thus: On the one hand, Total wishes to exercise its right under the compulsory pooling orders to avoid the statutory risk penalty. At the same time, Total wishes to have access to the requested well data. On the other hand, Burlington wishes to preserve the confidentiality of certain well data and this particular concern constituted the basis for Burlington's rejection of Total's payment of its share of estimated well costs. If I correctly understand Burlington's position, as represented in the Response, particularly at page 5, the only reason Burlington rejected Total's payment is because Total is not a signatory to a confidentiality agreement. In this regard, it should be noted that until now, we have never been

EXHIBIT
1

asked to execute a confidentiality agreement.

A common-sense solution to this particular dispute is obvious: Total will agree to execute an agreement protecting the confidentiality of the data it has requested from Burlington. By so doing, Burlington's concerns over the data are obviated and Total's payment of well costs under the pooling order should be rendered a non-issue. Accordingly, if Burlington will stipulate that Total's payment of its share of estimated well costs was both proper and timely and is not an issue in contention in this proceeding, then Total will agree to be bound by the terms of an acceptable confidentiality agreement approved by an order entered by the Commission or the Division Director.

To facilitate the prompt resolution of this particular matter, I have prepared the enclosed original of a proposed Stipulation And Agreement Governing the Confidentiality Certain Information for your review.

Thank you for your consideration of this proposal. Please let me hear from you before the end of business tomorrow.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall, Esq.

cc: Wm. J. LeMay, Director, NMOCD
Lynn Hebert, Esq. NMOCC Counsel
Rand Carroll, Esq. NMOCD Counsel
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