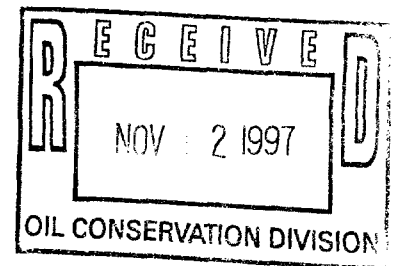


**BEFORE THE  
OIL CONSERVATION DIVISION**



**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**

**APPLICATION FOR REHEARING**

Total Minatome Corporation ("Total") by and through its undersigned counsel, moves pursuant to Section 78-2-25, N.M.S.A. (1978) of the New Mexico Oil and Gas Act and 19 N.M.A.C. 15.N.1222 for a rehearing of the November 5, 1997 denial of Total's October 31, 1997 Second Motion for Stay of Orders R-10877 and R-10878. Total respectfully submits that the denial is erroneous for the following reasons:

1. On October 16, 1997, Total tendered its share of estimated well costs pursuant to the terms of Order R-10878 and the exercise of its right to avoid the statutory risk penalty assessment under the Division's compulsory pooling order. On October 28, 1997, Burlington Resources Oil and Gas Company ("Burlington") improperly rejected Total's payment. Burlington's rejection creates significant uncertainty affecting the operation, meaning and effect of the Division's compulsory pooling orders.

2. The arguments set forth in Total's Second Motion for Stay, Total's Reply pursuant to its Second Motion for Stay, the authorities cited therein and the exhibits attached thereto, establish immediate harm to Total's interests with respect to the acreage dedicated to the Marcotte No. 2 well under Order R-10878 and the likelihood of harm with respect to its interests dedicated

to the Scott No. 24 well under Order R-10877. Conversely, Burlington failed to offer any argument or evidence establishing that it would be prejudiced by a temporary stay of Orders R-10877 and R-10878.

3. The Commission's denial of the Second Motion for Stay was arbitrary, capricious and an abuse of discretion. Further, the denial constitutes a failure to exercise the Commission's statutory mandate to enforce compliance with its orders pursuant to, *inter alia*, Section 70-2-6, Section 70-2-28 and 70-2-31.

4. The Commission failed to convene a public hearing as required under Section 70-2-23, N.M.S.A. (1978).

5. The determination that the Division and the Commission do not have jurisdiction over the matters raised in Total's Second Motion for Stay is contrary to Sections 70-2-6, 70-2-28 and 70-2-31, N.M.S.A. (1978), specifically, and the Agency's general charge under the New Mexico Oil and Gas Act, Section 70-2-1, N.M.S.A. (1978), et. seq.

6. The denial of the Second Motion for Stay constitutes an irrational departure from established administrative policy and allows the creation of an unacceptable precedent in the operation of the Division's and Commission's compulsory pooling orders by creating a new option in the operator to determine whether (1) a non-consenting working interest owner has timely and properly paid its share of estimated well costs and, (2) whether it may withhold 300 percent of the well costs from the non-consenting working interest owner's share of production.


7. To facilitate the Commission's consideration of this Application for Rehearing, Total hereby requests that the following materials be incorporated as a matter of record: (1) Orders R-10877 and R-10878; (2) Total's Second Motion for Stay of Orders R-10877 and R-

10878, plus exhibits; (3) Burlington's Response in Opposition to Total Minatome Corporation's Second Motion to Stay Division Orders R-10877 and R-10878; (4) the November 5, 1997 letter order issued by William J. LeMay; (5) Correspondence to counsel dated November 5, 1997, with attachment; (6) Total's November 7, 1997 Reply pursuant to its Second Motion for Stay of Orders R-10877 and R-10878, plus exhibits; (7) The exhibits and transcripts from the July 10, 1997 examiner hearing.

WHEREFORE, Total Minatome Corporation respectfully requests that, at the rehearing, the Commission enter its Order (1) setting aside the November 5, 1997 order and (2) granting Total's Second Motion for Stay.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By   
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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 12 day of November, 1997, as follows:

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