

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CONTINENTAL OIL COMPANY,
ET AL.,

Petitioners-Appellants

-vs-

No. _____

OIL CONSERVATION COMMISSION
OF NEW MEXICO, ET AL.,

Respondents-Appellees

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Cross-Appellant

APPEAL FROM THE DISTRICT COURT

OF

LEA COUNTY

John R. Brand, Judge

TRANSCRIPT OF RECORD

Volume I

Appearances in District Court:

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Galatzan, El Paso, Tex.
Patrick J. McCarthy, Omaha, Nebr.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CONTINENTAL OIL COMPANY
AMERADA PETROLEUM CORPORATION
PAN AMERICAN PETROLEUM CORPORATION
SHELL OIL COMPANY
THE ATLANTIC REFINING COMPANY
STANDARD OIL COMPANY OF TEXAS
HUMBLE OIL & REFINING COMPANY

Petitioners-Appellants

-vs-

No. _____

OIL CONSERVATION COMMISSION OF
NEW MEXICO, Composed of John
Burroughs, Member and Chairman,
Murray Morgan, Member, and A. L.
Porter, Secretary;
TEXAS PACIFIC COAL & OIL COMPANY,
a Foreign Corporation;
EL PASO NATURAL GAS COMPANY, a
Foreign Corporation;
PERMIAN BASIN PIPELINE COMPANY,
a Foreign Corporation;
SOUTHERN UNION GAS COMPANY, a
Foreign Corporation,

Respondents-Appellees

OIL CONSERVATION COMMISSION OF
NEW MEXICO,

Cross-Appellant

APPEAL FROM THE DISTRICT COURT

OF

LEA COUNTY

John R. Brand, Judge

TRANSCRIPT OF RECORD

Volume I

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Exhibits Introduced in District Court Trial:

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No. 3	142	144	"
No. 4	186	189	"
No. 5	194	201	"

** *** **

BE IT REMEMBERED, That on the 13th day of May 1958, there was filed in the office of the Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16,213 on the Civil Docket of said Court, wherein, IN THE MATTER OF THE PETITION OF CONTINENTAL OIL COMPANY FOR APPEAL AND REVIEW OF ORDERS NOS. R-1092-A AND R-1092-C ENTERED BY THE OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO IN CASE NO. 1327, CONTINENTAL OIL COMPANY, A Corporation, is Petitioner, and OIL CONSERVATION COMMISSION OF NEW MEXICO, Composed of Edwin L. Mechem, Member and Chairman, Murray E. Morgan, Member, and A. L. Porter, Member and Secretary; TEXAS PACIFIC COAL & OIL COMPANY, A Corporation; EL PASO NATURAL GAS COMPANY, a Corporation; SOUTHERN UNION GAS COMPANY, A Corporation; and PERMIAN BASIN PIPELINE COMPANY, A Corporation, are Respondents, in words and figures as follow, to-wit: a

PETITION FOR REVIEW OF ACTION OF
THE OIL CONSERVATION COMMISSION OF NEW MEXICO

Comes now Continental Oil Company, hereinafter called petitioner, and petitions the Court for review of the action of the Oil Conservation Commission of the State of New Mexico in Case No. 1327 on the Commission's docket, and Orders No. R-1092-A and No. R-1092-C entered therein, and states:

1. Petitioner is a corporation organized under the laws of the State of Delaware duly admitted to do business in the State of New Mexico, and is the owner and operator of natural gas wells situate within the exterior boundaries of the Jalmat Gas Pool, located in Lea County, New Mexico; respondent Oil Conservation Commission of New Mexico is a statutory body created and existing under the provisions of the laws of the State of New Mexico, composed of the members named in the caption hereof, and vested with jurisdiction over all matters relating to the conservation of oil and gas in the State of New Mexico, the prevention of waste, and the enforcement of the Conservation Act of the State of New Mexico, being Chapter 65, Article 3, New Mexico Statutes Annotated, 1953 Compilation, as amended; respondent Texas Pacific Coal & Oil Company is a foreign corporation admitted to do business in the State of New Mexico; respondent El Paso Natural Gas Company is a foreign corporation admitted to do business in the State of New Mexico; respondent Southern Union Gas Company is a foreign corporation admitted to do business in the State of New Mexico; and respondent Permian Basin Pipeline Company is a foreign corporation admitted to do business in the State of New Mexico.

2. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327 on the docket of said Commission, changing the existing gas proration formula applicable to wells in the Jalmat Gas

Pool, which existing formula had been promulgated by Order No. R-520 of the Oil Conservation Commission, entered in Case No. 673 on August 12, 1954.

3. Petitioner was a party to Case No. 1327 and was affected by Order No. R-1092-A entered therein. Petitioner duly filed an application for rehearing directed to said Order No. R-1092-A, and after rehearing the Oil Conservation Commission, on the 25th day of April, 1958, entered its order No. R-1092-C, re-affirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the disposition of its application for rehearing and with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Case No. 1327 and Orders Nos. R-1092-A and R-1092-C entered therein.

4. The nature of the proceeding before the Oil Conservation Commission of New Mexico is briefly as follows:

(a) The Jalmat Gas Pool is a pool defined and delineated by the Oil Conservation Commission, and is located in Lea County, New Mexico. The Commission, on August 12, 1954, after extended hearings, entered its Order No. R-520, which order instituted gas prorationing in the Jalmat Gas Pool, said Order No. R-520 having been entered in Case No. 673 on the Commission's docket. Said order provided for allocation of the allowable gas production among the various wells in the pool on the basis of 100 per cent of the acreage dedicated to each individual well. All owners and

operators and persons interested were afforded an opportunity to be heard in Case 673. No appeal was taken from Order No. R-520, which order became effective January 1, 1955, and remained in full force and effect until the action of the Commission complained of herein. A copy of said Order No. R-520, marked as Exhibit A, is filed with the Clerk of the District Court of Lea County Simultaneously with the filing of this petition for review and by reference is incorporated herein. Copies of said order are in the possession of, or available to, all parties to this proceeding.

(b) In the year 1957 Texas Pacific Coal & Oil Company filed its application with the Commission seeking an order immediately terminating gas prorationing in the Jalmat Gas Pool, or in the alternative, for an order cancelling all accumulated underproduction with redistribution of allowables, and establishing a new proration formula containing deliverability as a factor in said proration formula. A copy of said application is attached hereto, marked Exhibit B, and made a part hereof.

(c) The application of Texas Pacific Coal and Oil Company was heard as Commission Case No. 1327. After hearings were held, the Commission on January 29, 1958, entered its Order No. R-1092-A, a copy of which is attached hereto, marked Exhibit C, and made a part hereof. By terms of said Order No. R-1092-A, the Commission denied the application of Texas Pacific Coal & Oil Company insofar as it sought the termination of prorationing in the Jalmat Gas Pool, and Cancellation and redistribution of allowables

in said pool, but it did change the proration formula in said Pool from the formula set forth in Order No. R-520 to a formula based upon 25 per cent acreage and 75 per cent acreage times deliverability

(d) On February 17, 1958, and within the time allowed by law, petitioner filed its application for rehearing on Order No. R-1092-A, a copy of which application is attached hereto, marked Exhibit D, and made a part hereof. The Commission granted rehearing in accordance with its Order No. R-1092-B, copy of which is attached hereto, marked Exhibit E, and made a part hereof. After notice and hearing, the Commission on April 25, 1958, entered its Order No. R-1092-C, denying the relief sought in Petitioners application for rehearing, and reaffirming the provisions of Order No. R-1092-A. A copy of said Order No. R-1092-C is attached hereto, marked Exhibit F, and made a part hereof.

5. Parties adverse to petitioner in the proceedings before the Oil Conservation Commission of New Mexico in Case No. 1327 were Texas Pacific Coal & Oil Company, El Paso Natural Gas Company, Permian Basin Pipe Line Company, and Southern Union Gas Company, each of which parties are named as respondents herein.

6. Petitioner alleges that Orders No. R-1092-A and No. R-1092-C are unreasonable, unlawful, arbitrary and capricious, and are therefore invalid and void on the following grounds, which grounds were raised in petitioner's application for rehearing before the Oil Conservation Commission of New Mexico:

(a) The application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 entered in Case No. 673 before the Commission, and therefore should not have been entertained by the Commission, and could not be the basis of a valid order in Case No. 1327 insofar as changing of the basis of allocation of allowable production from the Jalmat Gas Pool from 100 per cent acreage to include a deliverability factor in the proration formula is concerned.

(b) Order No. R-520, entered in Case No. 673 on the Commission's docket constituted a final determination that the allocation of the allowable production from the Jalmat Gas Pool should be made on a 100 per cent acreage basis. No appeal was taken from the final decision of the Commission in Case No. 673, and the application in Case No. 1327 did not allege, and the record in said case does not show any change of conditions in the Jalmat Gas Pool, or that any waste would result from retention of the 100 per cent acreage allocation formula. On the basis of the application and the record, the Commission was without authority or jurisdiction to modify or change the proration formula ordered in Case No. 673 by its Order No. R-520.

(c) Texas Pacific Coal & Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and did not appeal from the final decision of the Commission entered in

Order No. R-520, and said company was estopped to request a change in the proration formula for the Jalmat Gas Pool in the absence of evidence showing a change in conditions in the pool from the time of entry of Order No. R-520 or evidence showing that waste would result from the retention of the 100 per cent acreage formula. No such allegations were made and no such evidence was introduced, and therefore the Commission was without authority to revise, modify or change Order No. R-520 to provide that the proration formula for the Jalmat Gas Pool should contain a deliverability factor.

(d) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A, Exhibit C attached hereto, and in its Order No. R-1092-C, Exhibit F attached hereto, found there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells. Such findings by the Commission are contrary to the evidence in Case No. 1327 before the Commission, and are without support in the evidence introduced before the Commission, and are invalid and void.

(e) Commission's Orders No. R-1092-A and No. R-1092-C are invalid in that eventhough it be assumed that it was proved by a preponderance of the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells," as found by the Commission, such a finding provides

no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of allowable production of gas from the Jalmat Gas Pool.

(f) The Commission used as a basis for its decision in Case No. 1327 to include deliverability in the proration formula of the Jalmat Gas Pool, factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of the Commission's order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat proration formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(g) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration formula would result in economic waste in that it would require the expenditure of large sums of money by this petitioner and other operators in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in the pool in order to protect their correlative rights, although the ultimate recovery from the

various tracts would not be appreciably increased thereby, and although efforts to increase the deliverability of wells in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the proration formula, and Orders No. R-1092-A and No. R-1092-C are therefore in violation of and contrary to the Commission's statutory duty to prevent waste and protect correlative rights, and are therefore invalid and void.

(h) The uncontradicted evidence before the Commission showed that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for ten to twenty years, and that their condition is such that the action required of a prudent operator under a proration formula containing a deliverability factor would necessarily result in the underground waste of natural gas, since efforts to increase the deliverability of older wells would result in the loss of some wells, and Orders No. R-1092-A and No. R-1092-C are in violation of the Commission's statutory duty to prevent waste and protect correlative rights, and are therefore invalid and void.

(i) The uncontradicted evidence before the Oil Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be

under the straight acreage formula. Evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(j) The evidence shows that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of petitioner and would deprive petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying lands owned by, or operated by, petitioner, or both, without affording compensating counterdrainage from other adjoining tracts, and would prevent petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this petitioner are located.

(k) Orders No. R-1092-A and No. R-1092-C are unreasonable, arbitrary and discriminatory and the effect of said orders is to confiscate and deprive petitioner of its property without due process of law contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States of America, and of Article II, Section 18 of the Constitution of the State of New Mexico, in that in reliance upon the provisions of Order No. R-520 this petitioner has acquired vested property rights in

the Jalmat Gas Pool, which rights will be impaired by said orders No. R-1092-A and R-1092-C.

(1) Order No. R-1092-A and as it was reaffirmed by Order No. R-1092-C, insofar as it purports to revise and change the existing allocation formula for the Jalmat Gas Pool is so vague, indefinite and uncertain as to leave this petitioner without knowledge or information as to the meaning thereof, and renders said Order No. R-1092-A invalid and void, particularly as to paragraph (3) of said order insofar as it purports to revise, effective July 1, 1958, Rule 6 of the Special Rules and Regulations for the Jalmat Gas Pool.

(m) The orders of the Commission, review of which is here sought, are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the further reason that the Commission refused to permit this petitioner and other petitioner opposing the application in Case No. 1327 to present testimony with reference to property rights acquired by them during the existence of Order No. R-520 hereinabove referred to. In particular the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage

allocation formula with reference to which this petitioner and other parties in comparable positions sustain irreparable injury as the result of the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

7. This petitioner is the owner of oil and gas leases and gas wells, and is the operator of gas leases and gas wells producing within the limits of the Jalmat Gas Pool in Lea County, New Mexico, and is affected by the orders of the Commission review of which are here sought, and is dissatisfied with the disposition of the application for rehearing, and this Court has jurisdiction of this petition for review.

8. The formula for prorationing of allowable production set forth in Order No. R-1092-A which introduces a deliverability factor in the proration formula is not a reasonable basis upon which to prorate and allocate the allowable gas production from the Jalmat Gas Pool in that it fails to recognize or protect correlative rights, and will result in waste, and is therefore unlawful. The 100 per cent acreage factor heretofore in effect in said pool better protects the correlative rights of the owners in the pool and the prevention of waste. The inclusion of a deliverability factor in the proration formula will result in economic waste, underground waste, and will violate correlative rights of operators, including those of petitioner. Petitioner stands ready to introduce evidence in support of these allegations upon the trial of this cause, as provided by law.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 19(b) Chapter 168 of the laws of the State of New Mexico, 1949, Section 65-3-22, New Mexico Statutes Annotated, 1953 compilation, that:

1. Notice of this Petition for Review be served in the manner provided for the service of summons in civil proceedings upon the Oil Conservation Commission of New Mexico by service upon the members thereof, upon Texas Pacific Coal & Oil Company, and upon the parties who entered appearances in Case No. 1327 in support of the application of Texas Pacific Coal & Oil Company, being El Paso Natural Gas Company, Permian Basin Pipe Line Company and Southern Union Gas Company.
2. This Petition be set for trial in the manner provided by law, and that this Court review the action of the Oil Conservation Commission herein complained of.
3. This Court try this action denovo, as provided by law, and determine the issues of fact and law presented herein.
4. This Court enter its order vacating and setting aside Orders No. R-1092-A and No. R-1092-C of the Commission hereinabove referred to, and enter in lieu thereof its order affirming and making permanent Commission's Order No. R-520 of the Oil Conservation Commission.
5. This Court enter such other or further order or orders modifying or in lieu of Orders Nos. R-1092-A and R-1092-C as

the Court may determine to be proper.

6. That petitioner have such other and further relief as may be proper.

Respectfully submitted,

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By /s/ Jason W. Kellahin
Jason W. Kellahin

Attorneys for Petitioner, Continental
Oil Company.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 673
ORDER NO. R-520

THE APPLICATION OF THE OIL CONSERVATION
COMMISSION UPON ITS OWN MOTION FOR AN
ORDER AMENDING, REVISING OR ABROGATING
EXISTING RULES AND REGULATIONS OF THE
OIL CONSERVATION COMMISSION, AND/OR
PROMULGATING RULES AND REGULATIONS,
RELATING TO GAS POOL DELINEATION, GAS
PRORATION, AND OTHER RELATED MATTERS,
AFFECTING OR CONCERNING THE JALCO,
LANGMAT, EUMONT, AND ARROW GAS POOLS,
LEA COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m., on March 17, 1954, April 15, 1954, May 10, 1954, and May 11, 1954, at Santa Fe, New Mexico, before the Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 12th day of August, 1954, the Commission, a quorum being present, having considered the records and testimony adduced and being fully advised in the premises,

FINDS:

(1) That due notice of the time and place of hearing and the purpose thereof having been given as required by law, the Commission has jurisdiction of this case and the subject matter thereof.

(2) That under date of February 17, 1953, the Commission issued its Order No. R-264 creating the Jalco, Langmat, Arrow, and Eumont Gas Pools. That Order R-264 defined the vertical and horizontal limits of the Langmat, Jalco, Eumont and Arrow gas pools and that by subsequent orders the Commission extended the horizontal limits of the Jalco and Eumont Gas Pools and extended the vertical limits of the Eumont Gas Pool.

(3) That under date of September 28, 1953, the Commission issued its Orders Nos. R-368, R-369, R-370 and R-371 and under date of November 10, 1953, the Commission issued its Orders Nos. R-368-A, R-369-A, R-370-A and R-371-A, providing rules, definitions and procedures to be followed in prorating gas in the jalco, Langmat, Eumont and Arrow gas pools; and by subsequent orders issued after due notice and hearing, the Commission allocated production of gas in said pools commencing January 1, 1954.

(4) That the Eumont and Arrow Gas Pools are separate gas reservoirs and should be defined vertically and horizontally as set forth in this order; that the Jalco and Langmat Gas Pools are in fact one common gas reservoir, and said reservoir should be designated the "Jalco Gas Pool" and delineated as set forth in this order.

(5) That the producing capacity of the gas wells in the Jalmat, Eumont and Arrow Gas Pools is greater than the market demand for gas from each of such pools.

(6) That for the prevention of waste it is necessary to allocate and prorate the gas production among the gas wells in the Jalmat, Eumont and Arrow Gas Pools in accordance with provisions of this order.

(7) That the protection and proper recognition of correlative rights as such rights are defined by Section 26 (h) Chapter 168, New Mexico Session Laws of 1949, require that the gas production from the Jalmat, Eumont and Arrow gas pools be prorated in accordance with the terms and provisions of this order.

(8) That the Rules and Regulations hereinafter set forth in this order are in all respects in the interests of conservation and provide for the allocation of the allowable production among the gas wells in the Jalmat, Eumont and Arrow gas pools upon a reasonable basis and give appropriate recognition to correlative rights.

(9) That one gas well in the Jalmat, Eumont and Arrow Gas Pools can efficiently drain 640 acres.

(10) That for the prevention of waste, a limiting gas-oil ratio of 10,000-to-1 should be assigned to the units in the following pools, namely: Cooper-Jal Oil Pool, Langlie-Mattix Oil Pool, South Eunice Oil Pool, Penrose-Skelly Oil Pool, Leonard Oil Pool, South Leonard Oil Pool, Hardy Oil Pool, Rhodes Oil Pool, Jalmat Gas Pool, Arrow Gas Pool and Eumont Gas Pool.

(11) To prevent waste, the vertical limits of the following oil pools namely: Eunice-Monument Oil Pool, Arrowhead Oil Pool, South Eunice Oil Pool, Langlie-Mattix Oil Pool, Cooper-Jal Oil Pool, Rhodes Oil Pool, Eaves Oil Pool, Hardy Oil Pool, Penrose-Skelly Oil Pool, Leonard Oil Pool, South Leonard Oil Pool, should be redefined as provided hereinafter in this order so that the vertical limits of the said oil pools will not conflict with the vertical limits of overlying gas pools.

(12) That the horizontal limits of the oil pools named in Finding No. 11 should be defined as hereinafter set forth in this order.

(13) That the Falby-Yates Oil Pool should be abolished.

(14) That in the interests of conservation, the special rules hereinafter set forth governing the production of oil from wells completed within the vertical and horizontal limits of the Jalmat, Eumont and Arrow gas pools should be adopted.

(15) That for the prevention of waste and the protection of correlative rights, the special rules contained in this order should be adopted to govern the production of oil from wells completed or recompleted in such a manner that the bore hole of the well is open in both the upper gas pools and the underlying oil pools.

(16) That for the prevention of waste a "no-flare" rule should be adopted to prohibit the flaring, venting, or wasting of casinghead gas or any other type of gas in any of the gas or oil pools referred to and affected by this order.

IT IS THEREFORE ORDERED:

(1) That the Jalmat Gas Pool be and the same hereby is created. The vertical limits of the Jalmat Gas Pool shall extend from the top of the Tansill formation to a point 100

feet above the base of the Seven Rivers formation, thereby including all of the Yates formation. The horizontal limits of the Jalmat Gas Pool shall be the area as described in Exhibit "A" attached hereto and made a part hereof.

(2) That the vertical limits of the Eumont Gas Pool, heretofore created, shall extend from the top of the Yates formation to the base of the Queen formation, thereby including all of the Yates, Seven Rivers and Queen formations. The horizontal limits of the Eumont Gas Pool shall be the area as described in Exhibit "B" attached hereto and made a part hereof.

(3) That the vertical limits of the Arrow Gas Pool, heretofore created, shall extend from the top of the Yates formation to the base of the Queen formation, thereby including all of the Yates, Seven Rivers and Queen formations. The horizontal limits of the Arrow Gas Pool shall be the area as described in Exhibit "C" attached hereto and made a part hereof.

(4) That the vertical limits of the Eunice-Monument Oil Pool, heretofore created, shall include all of the Grayburg and San Andres formations. The horizontal limits of the Eunice-Monument Oil Pool shall be the area as described in Exhibit "D" attached hereto and made a part hereof.

(5) That the vertical limits of the Arrowhead Oil Pool shall include all of the Grayburg formation.

(6) That the vertical limits of the following oil pools, heretofore created, defined and described shall extend from a point 100 feet above the base of the Seven Rivers formation to the base of the Queen formation.

Cooper-Jal Oil Pool
South Eunice Oil Pool
Langlie-Mattix Oil Pool

(7) That the horizontal limits of the Cooper-Jal Oil Pool shall be the area as described in Exhibit "E" attached hereto and made a part hereof.

(8) That the horizontal limits of the Langlie-Mattix Oil Pool shall be the area as described in Exhibit "F" attached hereto and made a part hereof.

(9) That the horizontal limits of the South Eunice Oil Pool shall be the area as described in Exhibit "G" attached hereto and made a part hereof.

(10) That no gas, either dry gas or casinghead gas, shall be flared or vented in the following pools unless specifically authorized by order of the Commission after notice and hearings

Eunice-Monument Oil Pool
South Eunice Oil Pool
Hardy Oil Pool
Penrose-Skelly Oil Pool
Cooper-Jal Oil Pool
Arrowhead Oil Pool
Langlie-Mattix Oil Pool
Rhodes Oil Pool
Leonard Oil Pool
South Leonard Oil Pool

Eaves Oil Pool
Arrow Gas Pool
Eumont Gas Pool
Jalmat Gas Pool

This rule shall become effective November 1, 1954. Any operator desiring to obtain exception from the provisions of this rule shall apply for hearing prior to September 15, 1954. All operators shall file Form C-110, in duplicate, designating thereon the disposition of all dry gas or casinghead gas from each well in each pool listed above. Within 15 days after completion of any oil or gas well within the boundaries of the above listed pools, the operator shall file Form C-110 designating the disposition of gas from the well.

Failure to comply with the provisions of this rule within the prescribed time limits will result in the suspension of any further allowable. Extraction plants processing any gas from any of the above designated pools shall comply with the "no-flare" provisions of this rule, provided however, that the restriction may be lifted when mechanical difficulties arise or when the gas flared is of no commercial value.

(11) That oil wells producing from the following named pools shall be allowed to produce a volume of gas each day not exceeding the daily normal unit oil allowable multiplied by 10,000; provided however, that such well shall not be allowed to produce oil in excess of the normal unit allowable as ordered by the Commission under the provisions of Rule 505; Cooper-Jal Oil Pool, Langlie-Mattix Oil Pool, South Eunice Oil Pool, Penrose-Skelly Oil Pool, Leonard Oil Pool, South Leonard Oil Pool, Hardy Oil Pool and Rhodes Oil Pool.

(12) That the Falby-Yates Oil Pool as heretofore created, defined and described shall be abolished and all oil wells presently producing from the Falby-Yates Oil Pool shall be governed by the applicable rules of the Jalmat Gas Pool.

(13) That that portion of the Rhodes Storage Area lying within the defined limits of the Jalmat Gas Pool shall be exempted from the applicable provisions of the Jalmat Gas Pool Rules. The Rhodes Storage Area shall include the following described area:

TOWNSHIP 26 South, RANGE 37 East, NMPM
Sec. 4: W/2 NW/4, SE/4 SE/4, W/2 SE/4, SW/4;
Sec. 5: All
Sec. 6: NE/4 NW/4, NE/4, SE/4 SE/4, N/2 SE/4
Sec. 7: NE/4 NE/4
Sec. 8: N/2, N/2 S/2, SE/4 SW/4, S/2 SE/4
Sec. 9: All
Sec. 10: W/2 NW/4, SE/4 NW/4, S/2
Secs. 15 & 16: All
Sec. 17: E/2 NW/4, E/2
Sec. 20: E/2
Secs. 21 & 22: All
Sec. 23: SW/4 NW/4, SW/4
Secs. 26, 27, & 28: All
Sec. 29: E/2 NE/4

That special pool rules applicable to the Jalmat Gas Pool be, and the same hereby are promulgated as follows:

SPECIAL RULES AND REGULATIONS FOR
THE JALMAT GAS POOL

Well Spacing and Acreage Requirements for Drilling Tracts.

RULE 1. Any well drilled a distance of one mile or more outside the boundary of the Jalmat Gas Pool shall be classified as a wildcat well. Any well drilled less than one mile outside the boundary of the Jalmat Gas Pool shall be spaced, drilled, operated and prorated in accordance with the regulations in effect in the Jalmat Gas Pool.

RULE 2. Each well drilled or recompleted within the Jalmat Gas Pool on a standard proration unit after the effective date of this rule shall be drilled not closer than 1980 feet to any boundary line of the tract nor closer than 330 feet to a quarter-quarter section line or subdivision inner boundary line. Any well drilled to and producing from the Jalmat Gas Pool prior to the effective date of this order at a location conforming to the spacing requirements effective at the time said well was drilled shall be considered to be located in conformance with this rule.

RULE 3. The Secretary of the Commission shall have authority to grant exception to the requirements of Rule 2 without notice and hearing where application has been filed in due form and the necessity for the unorthodox location is based on topographical conditions or is occasioned by the recompletion of a well previously drilled to another horizon.

Applicants shall furnish all operators within a 1980-foot radius of the subject well a copy of the application to the Commission, and applicant shall include with his application a list of names and addresses of all operators within such radius, together with a stipulation that proper notice has been given said operators at the addresses given. The Secretary of the Commission shall wait at least 20 days before approving any such unorthodox location, and shall approve such unorthodox location only in the absence of objection of any offset operators. In the event an operator objects to the unorthodox location the Commission shall consider the matter only after proper notice and hearing.

RULE 4. The provisions of Statewide Rule 104, Paragraph (k), shall not apply to the Jalmat Gas Pool located in Lea County, New Mexico.

GAS PRORATION

RULE 5. (a) The acreage allocated to a gas well for proration purposes shall be known as the gas proration unit for that well. For the purpose of gas allocation in the Jalmat Gas Pool, a standard proration unit shall consist of between 632 and 648 contiguous surface acres substantially in the form of a square which shall be a legal subdivision (section) of the U. S. Public Land Surveys with a well located at least 1980 feet from the nearest property lines; provided, however, that a non-standard gas proration unit may be formed after notice and hearing by the Commission, or under the provision of Paragraph (b) of this Rule.

The allowable production from any non-standard gas proration unit as compared with the allowable production therefrom if such tract were a standard unit shall be in the ratio of the area of such non-standard proration unit expressed in acres to 640 acres. Any gas proration unit containing between 632 and 648 acres shall be considered to contain 640 acres for the purpose of computing allowables.

In establishing a non-standard gas proration unit the location of the well with respect to the two nearest boundary lines thereof shall govern the maximum amount of acreage that may be assigned to the well for the purposes of gas proration; provided, however, that any well drilled to and producing from the Jalmat Gas Pool, as defined herein, prior to the effective date of this order at a location conforming with the spacing requirements effective at the time said well was drilled shall be granted a tolerance not exceeding 330 feet with respect to the required distances from the boundary lines. The maximum acreage which shall be assigned with respect to the well's location shall be as follows:

<u>Location</u>	<u>Maximum Acreage</u>
660' - 660'	160 acres
660' - 1980'	320 acres

(b) The Secretary of the Commission shall have authority to grant an exception to Rule 5 (a) without Notice and Hearing where application has been filed in due form and where the following facts exist and the following provisions are complied with;

1. The non-standard gas proration unit consists of contiguous quarter-quarter sections and/or lots.
2. The non-standard gas proration unit lies wholly within a single governmental section.
3. The entire non-standard gas proration unit may reasonably be presumed to be productive of gas.
4. The length or width of the non-standard gas proration unit does not exceed 5280 feet.
5. The applicant presents written consent in the form of waivers from (a) all operators owning interests in the quarter sections in which any part of the non-standard gas proration unit is situated and which acreage is not included in said non-standard gas proration unit, and (b) all operators owning interests within 1500 feet of the well to which such gas proration unit is proposed to be allocated.

6. In lieu of paragraph 5 of this rule, the applicant may furnish proof of the fact that said offset operators were notified by registered mail of his intent to form such non-standard gas proration unit. The Secretary of the Commission may approve the application if, after a period of 30 days following the mailing of said notice, no operator has made objection to formation of such non-standard gas proration unit.

RULE 6. (a) The Commission after notice and hearing, shall consider the nominations of gas purchasers from the Jalmat Gas Pool and other relevant data and shall fix the allowable production of the Jalmat Gas Pool.

(b) The allowable assigned to any well capable of producing its normal gas allowable in the Jalmat Gas Pool shall be the same proportion of the total remaining allowable allocated to said pool after deducting allowables of marginal wells that the number of acres contained in the gas proration unit for that well bears to the acreage contained in all gas proration units assigned to non-marginal wells in the Jalmat Gas Pool.

RULE 7. At least 30 days prior to the beginning of each gas proration period the Commission shall hold a hearing after due notice has been given. The Commission shall cause to be submitted by each gas purchaser its "Preliminary Nominations" of the amount of gas which each in good faith actually desires to purchase within the ensuing proration period, by months, from the Jalmat Gas Pool. The Commission shall consider the "Prelimin-

ary Nominations" of purchasers, actual production, and such other factors as may be deemed applicable in determining the amount of gas that may be produced without waste within the ensuing proration period. "Preliminary Nominations" shall be submitted on a form prescribed by the Commission.

RULE 8. In the event a gas purchaser's market shall have increased or decreased, he may file with the Commission prior to the 10th day of the month a "supplemental" nomination, showing the amount of gas he actually in good faith desires to purchase during the ensuing proration month from the Jalmat Gas Pool. The Commission shall hold a public hearing between the 15th and 20th days of each month to determine the reasonable market demand for gas for the ensuing proration month, and shall issue a proration schedule setting out the amount of gas which each well may produce during the ensuing proration month.

Included in the monthly proration schedule shall be (a) a summary of the total pool allocation for that month showing nominations, and adjustments made for underage or overage applied from a previous month, (b) a tabulation of the net allowable, and production for the second preceding month together with a cumulative overage or underage computation, (c) a tabulation of the current and net allowables for the preceding month, (d) a tabulation of current monthly allowables for the ensuing proration month, and (e) a tabulation of the acreage assigned each well together with a tabulation of the acreage factor assigned each well. For the purpose of allocation a proration unit of 640 acres shall be assigned an acreage factor of 4.00; a proration unit of 160 acres a factor of 1.00, etc.

"Supplemental Nominations" shall be submitted on a form prescribed by the Commission.

The Commission shall include in the proration schedule the gas wells in the Jalmat Gas Pool delivering to a gas transportation facility, or lease gathering system, and shall include in the proration schedule of the Jalmat Gas Pool any well which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility, which is reasonably capable of handling the type of gas produced by such well. The total allowable to be allocated to the pool each month shall be equal to the sum of the preliminary or supplemental nominations (whichever is applicable), together with any adjustment which the Commission deems advisable.

If during a proration month the acreage assigned a well is increased the operator shall notify the Proration Manager in writing (Box 2045, Hobbs, New Mexico) of such increase. The increased allowable assigned the gas proration unit for the well shall be effective on the first day of the month following receipt of the notification by the Proration Manager.

BALANCING OF PRODUCTION

RULE 9. Underproduction: The dates 7:00 a.m., January 1, and 7:00 a.m., July 1, shall be known as balancing dates and the periods of time bounded by these dates shall be known as gas proration periods. The amount of current gas allowable remaining unproduced at the end of each proration period shall be carried forward to and may be produced during the next succeeding proration period in addition to the normal gas allowable for such succeeding period; but whatever amount thereof is not made up within the first succeeding proration period shall be cancelled.

If it appears that such continued underproduction has resulted from inability of the well to produce its allowable, it may be classified as a marginal well and its allowable reduced to the well's ability to produce.

If at the end of a proration period a marginal well has produced more than the total allowable assigned a non-marginal unit of corresponding size, the marginal well shall be reclassified as a non-marginal well and its allowable adjusted accordingly.

If during a proration period a marginal well is reworked or recompleted in such a manner that its productive capacity is increased to the extent that it should be reclassified as a non-marginal well, the reclassification shall be effective on the first day of the proration month following the date of recompletion.

The Proration Manager may reclassify a well at any time if production data or deliverability tests reflect the need for such a reclassification.

RULE 10. Overproductions A well which has produced a greater amount of gas than was allowed during a given proration period shall have its allowable for the first succeeding proration period reduced by the amount of such overproduction and such overproduction shall be made up within the first succeeding proration period. If, at the end of the first succeeding proration period, the well is still overproduced, and has not been in balance since the end of the preceding proration period, then it shall be shut in and its current monthly allowable charged against said overproduction until the well is in balance. If, at any time, a well is overproduced an amount equaling six times its current monthly allowable, it shall be shut in until it is in balance.

The Commission may allow overproduction to be made up at a lesser rate than would be the case if the well were completely shut in upon a showing at public hearing after due notice that complete shut in of the well would result in material damage to the well.

GRANTING OF ALLOWABLES

RULE 11. No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease.

RULE 12. Allowables to newly completed gas wells shall commence on the date of connection to a gas transportation facility, as determined from an affidavit furnished to the Commission (Box 2045, Hobbs, New Mexico) by the purchaser, or the date of filing of Form C-104 and Form C-110 and the plat described above, whichever date is the later.

REPORTING OF PRODUCTION

RULE 13. The monthly gas production from each well shall be metered separately and the gas production therefrom shall be reported to the Commission on Form C-115 so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was produced. The operator shall show on such report what disposition has been made of the gas produced.

Each purchaser or taker of gas in the Jalmat Gas Pool shall submit a report to the Commission so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was purchased or taken.

Such report shall be filed on either Form C-111 or Form C-114 (whichever is applicable) with the wells being listed in approximately the same order as they are listed on the proration schedule.

Forms C-111 and C-114 referred to herein shall be submitted in duplicate, the original being sent to the Commission at Box 871, Santa Fe, New Mexico, the other copy being

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sent to Box 2045, Hobbs, New Mexico.

Form C-115 shall be submitted in accordance with Rule 1114 of the Commission's Rules and Regulations.

The full production of gas from each well shall be charged against the well's allowable regardless of what disposition has been made of the gas; provided, however, that gas used on the lease for consumption in lease houses, treaters, compressors, combustion engines and other similar lease equipment shall not be charged against the well's allowable.

DEFINITIONS

RULE 14. A gas well shall mean a well producing with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil.

RULE 15. A well producing from the Jalmat Gas Pool and not classified as a gas well as defined in Rule 14 shall be classified as an oil well.

RULE 16. The term "gas purchaser" as used in these rules, shall mean any "taker" of gas either at the wellhead or at any point on the lease where connection is made for gas transportation or utilization. It shall be the responsibility of said "taker" to submit a nomination.

RULE 17. No gas, either dry gas or casinghead gas, produced from the Jalmat Gas Pool shall be flared or vented unless specifically authorized by order of the Commission after notice and hearing.

RULE 18. Oil wells producing from the Jalmat Gas Pool shall be allowed to produce a volume of gas each day not exceeding the daily normal unit oil allowable multiplied by 10,000; provided, however, that such well shall not be allowed to produce oil in excess of the normal unit allowable as ordered by the Commission under the provisions of Rule 505

PROVIDED FURTHER, After the effective date of this order no well shall be completed or recompleted in such a manner that the producing zone of the overlying gas pool and the producing zone of the underlying oil pool are both open in the same well bore unless specifically authorized by order of the Commission after notice and hearing. Dual completion may be effected in accordance with the provisions of Rule 112-A of the Commission's Rules and Regulations.

Any well presently completed in such a manner that the well bore is open to both the overlying gas pool and the underlying oil pool shall be assigned to either the gas pool or the oil pool by the Commission staff. Any operator of any well completed in such a manner shall submit to the Commission office at Hobbs, New Mexico, all pertinent well completion data on Form C-105, together with electric logs, sample logs, drill stem test records, etc. All data shall be submitted in duplicate on or before September 15, 1954. Failure of any operator to submit the required data will result in cancellation of Form C-110 and subsequent cancellation of allowables.

If the operator is not satisfied with the well's assignment he may apply for a hearing on the matter in accordance with Commission Rule 1203.

PROVIDED FURTHER, Gas-Oil Ratio Tests shall be taken in accordance with the provisions of Rule 301 of the Commission's Rules and Regulations.

Gas-Oil Ratio Tests shall be taken in all oil or gas pools in accordance with the attached schedule, (Exhibit H). This schedule supersedes the annual Gas-Oil Ratio test schedule previously issued only where applicable.

The operator of any oil or gas well who has submitted Form C-116 to the Commission during 1954 in compliance with the 1954 Annual Gas-Oil Ratio test schedule previously adopted is exempted from the requirement of taking another Gas-Oil Ratio test during 1954. If the test previously submitted is not complete the Proration Manager shall so advise the operator and the operator shall submit the required test in conformance with the Gas-Oil Ratio test schedule as outlined in Exhibit "H" attached hereto and made a part hereof.

PROVIDED FURTHER, That for gas allocation purposes and assignment of allowables the combination of the Jalco and Langmat gas pools to the Jalmat Gas Pool shall be effective September 1, 1954.

It is recognized that a great many wells will be reclassified and reassigned as a result of the provisions of this order and that the time involved in the reclassification may cause certain inequities; therefore, the Proration Manager is hereby directed to take such action as he deems advisable to prevent inequitable withdrawals.

PROVIDED FURTHER, That in filing Form C-101 "Notice of Intention to Drill or Re-complete" all operators shall strictly comply with the provisions of Rule 104, paragraph (c).

PROVIDED FURTHER, That failure to comply with the provisions of this order or the rules contained herein shall result in the cancellation of allowable assigned to the affected well. No further allowable shall be assigned to the affected well until all rules and regulations are complied with. The Proration Manager shall notify the operator of the well and the purchaser in writing of the date of allowable cancellation and the reason therefor.

PROVIDED FURTHER, That special pool rules applicable to the Eumont Gas Pool be, and the same hereby are promulgated as follows:

**SPECIAL RULES AND REGULATIONS
FOR THE EUMONT GAS POOL**

Well Spacing and Acreage Requirements for Drilling Tracts.

RULE 1. Any well drilled a distance of one mile or more outside the boundary of the Eumont Gas Pool shall be classified as a wildcat well. Any well drilled less than one mile outside the boundary of the Eumont Gas Pool shall be spaced, drilled, operated and prorated in accordance with the regulations in effect in the Eumont Gas Pool.

RULE 2. Each well drilled or recompleted within the Eumont Gas Pool on a standard proration unit after the effective date of this rule shall be drilled not closer than 1980 feet to any boundary line of the tract nor closer than 330 feet to a quarter-quarter section line or subdivision inner boundary line. Any well drilled to and producing from the Eumont Gas Pool prior to the effective date of this order at a location conforming to the spacing requirements effective at the time said well was drilled shall be considered to be located in conformance with this rule.

RULE 3. The Secretary of the Commission shall have authority to grant exception to the requirements of Rule 2 without notice and hearing where application has been filed in due form and the necessity for the unorthodox location is based on topographical con-

ditions or is occasioned by the recompletion of a well previously drilled to another horizon.

Applicants shall furnish all operators within a 1980 foot radius of the subject well a copy of the application to the Commission, and applicant shall include with his application a list of names and addresses of all operators within such radius, together with a stipulation that proper notice has been given said operators at the addresses given. The Secretary of the Commission shall wait at least 20 days before approving any such unorthodox location, and shall approve such unorthodox location only in the absence of objection of any offset operators. In the event an operator objects to the unorthodox location the Commission shall consider the matter only after proper notice and hearing.

RULE 4. The provision of Statewide Rule 104, Paragraph (k), shall not apply to the Eumont Gas Pool located in Lea County, New Mexico.

GAS PRORATION

RULE 5. (a) The acreage allocated to a gas well for proration purposes shall be known as the gas proration unit for that well. For the purpose of gas allocation in the Eumont Gas Pool, a standard proration unit shall consist of between 632 and 648 contiguous surface acres substantially in the form of a square which shall be a legal subdivision (section) of the U. S. Public Land Surveys with a well located at least 1980 feet from the nearest property lines; provided, however, that a non-standard gas proration unit may be formed after notice and hearing by the Commission, or under the provisions of Paragraph (b) of this Rule.

The allowable production from any non-standard gas proration unit as compared with the allowable production therefrom if such tract were a standard unit shall be in the ratio of the area of such non-standard proration unit expressed in acres to 640 acres. Any gas proration unit containing between 632 and 648 acres shall be considered to contain 640 acres for the purpose of computing allowables.

In establishing a non-standard gas proration unit the location of the well with respect to the two nearest boundary lines thereof shall govern the maximum amount of acreage that may be assigned to the well for the purposes of gas proration; provided, however, that any well drilled to and producing from the Eumont Gas Pool, as defined herein, prior to the effective date of this order at a location conforming with the spacing requirements effective at the time said well was drilled shall be granted a tolerance not exceeding 330 feet with respect to the required distances from the boundary lines. The maximum acreage which shall be assigned with respect to the well's location shall be as follows:

<u>Location</u>	<u>Maximum Acreage</u>
660' - 660'	160 acres
660' - 1980'	320 acres

(b) The Secretary of the Commission shall have authority to grant an exception to Rule 5 (a) without Notice and Hearing where application has been filed in due form and where the following facts exist and the following provisions are complied with;

1. The non-standard gas proration unit consists of contiguous quarter-quarter sections and/or lots.
2. The non-standard gas proration unit lies wholly within a single governmental section.

3. The entire non-standard gas proration unit may reasonably be presumed to be productive of gas.

4. The length or width of the non-standard gas proration unit does not exceed 5280 feet.

5. The applicant presents written consent in the form of waivers from (a) all operators owning interests in the quarter sections in which any part of the non-standard gas proration unit is situated and which acreage is not included in said non-standard gas proration unit, and (b) all operators owning interests within 1500 feet of the well to which such gas proration unit is proposed to be allocated.

6. In lieu of paragraph 5 of this rule, the applicant may furnish proof of the fact that said offset operators were notified by registered mail of his intent to form such non-standard gas proration unit. The Secretary of the Commission may approve the application if, after a period of 30 days following the mailing of said notice, no operator has made objection to formation of such non-standard gas proration unit.

RULE 6. (a) The Commission after notice and hearing, shall consider the nominations of gas purchasers from the Eumont Gas Pool and other relevant data and shall fix the allowable production of the Eumont Gas Pool.

(b) The allowable assigned to any well capable of producing its normal gas allowable in the Eumont Gas Pool shall be the same proportion of the total remaining allowable allocated to said pool after deducting allowables of marginal wells that the number of acres contained in the gas proration unit for that well bears to the acreage contained in all gas proration units assigned to non-marginal wells in the Eumont Gas Pool.

RULE 7. At least 30 days prior to the beginning of each gas proration period the Commission shall hold a hearing after due notice has been given. The Commission shall cause to be submitted by each gas purchaser its "Preliminary Nominations" of the amount of gas which each in good faith actually desires to purchase within the ensuing proration period, by months from the Eumont Gas Pool. The Commission shall consider the "Preliminary Nominations" of purchasers, actual production, and such other factors as may be deemed applicable in determining the amount of gas that may be produced without waste within the ensuing proration period. "Preliminary Nominations" shall be submitted on a form prescribed by the Commission.

RULE 8. In the event a gas purchaser's market shall have increased or decreased, he may file with the Commission prior to the 10th day of the month a "supplemental" nomination, showing the amount of gas he actually in good faith desires to purchase during the ensuing proration month from the Eumont Gas Pool. The Commission shall hold a public hearing between the 15th and 20th days of each month to determine the reasonable market demand for gas for the ensuing proration month, and shall issue a proration schedule setting out the amount of gas which each well may produce during the ensuing proration month.

Included in the monthly proration schedule shall be (a) a summary of the total pool allocation for that month showing nominations, and adjustments made for underage or overage applied from a previous month (b) a tabulation of the net allowable, and production for the second preceding month together with a cumulative overage or underage computation, (c) a tabulation of the current and net allowables for the preceding month, (d) a tabulation of current monthly allowables for the ensuing proration month, and (e) a tabulation of the acreage assigned each well together with a tabulation of the acreage factor assigned each well. For the purpose of allocation a proration unit of 640 acres shall be assigned an acreage factor of 4.00; a proration unit of 160 acres a factor of 1.00, etc.

"Supplemental Nominations" shall be submitted on a form prescribed by the Commission.

The Commission shall include in the proration schedule the gas wells in the Eumont Gas Pool delivering to a gas transportation facility, or lease gathering system, and shall include in the proration schedule of the Eumont Gas Pool any well which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility, which is reasonably capable of handling the type of gas produced by such well. The total allowable to be allocated to the pool each month shall be equal to the sum of the preliminary or supplemental nominations (whichever is applicable) together with any adjustment which the Commission deems advisable.

If during a proration month the acreage assigned a well is increased the operator shall notify the Proration Manager in writing (Box 2045, Hobbs, New Mexico) of such increase. The increased allowable assigned the gas proration unit for the well shall be effective on the first day of the month following receipt of the notification by the Proration Manager.

BALANCING OF PRODUCTION

RULE 9. Underproduction: The dates 7:00 a.m., January 1, and 7:00 a.m., July 1, shall be known as balancing dates and the periods of time bounded by these dates shall be known as gas proration periods. The amount of current gas allowable remaining unproduced at the end of each proration period shall be carried forward to and may be produced during the next succeeding proration period in addition to the normal gas allowable for such succeeding period; but whatever amount thereof is not made up within the first succeeding proration period shall be cancelled.

If it appears that such continued underproduction has resulted from inability of the well to produce its allowable, it may be classified as a marginal well and its allowable reduced to the well's ability to produce.

If at the end of a proration period a marginal well has produced more than the total allowable assigned a non-marginal unit of corresponding size, the marginal well shall be reclassified as a non-marginal well and its allowable adjusted accordingly.

If during a proration period a marginal well is reworked or recompleted in such a manner that its productive capacity is increased to the extent that it should be reclassified as a non-marginal well, the reclassification shall be effective on the first day of the proration month following the date of recompletion.

The Proration Manager may reclassify a well at any time if production data or deliverability tests reflect the need for such a reclassification.

RULE 10. Overproduction: A well which has produced a greater amount of gas than was allowed during a given proration period shall have its allowable for the first succeeding proration period reduced by the amount of such overproduction, and such overproduction shall be made up within the first succeeding proration period. If, at the end of the first succeeding proration period, the well is still overproduced, and has not been in balance since the end of the preceding proration period, then it shall be shut in and its current monthly allowable charged against said overproduction until the well is in balance. If, at any time, a well is overproduced an amount equaling six times its current monthly allowable, it shall be shut in until it is in balance.

The Commission may allow overproduction to be made up at a lesser rate than would be the case if the well were completely shut in upon a showing at public hearing after

due notice that complete shut in of the well would result in material damage to the well.

GRANTING OF ALLOWABLES.

RULE 11. No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease.

RULE 12. Allowables to newly completed gas wells shall commence on the date of connection to a gas transportation facility, as determined from an affidavit furnished to the Commission (Box 2045, Hobbs, New Mexico) by the purchaser, or the date of filing of Form C-104, and Form C-110 and the plat described above, whichever date is the later.

REPORTING OF PRODUCTION

RULE 13. The monthly gas production from each gas well shall be metered separately and the gas production therefrom shall be reported to the Commission on Form C-115 so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was produced. The operator shall show on such report what disposition has been made of the gas produced.

Each purchaser or taker of gas in the Eumont Gas Pool shall submit a report to the Commission so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was purchased or taken.

Such report shall be filed on either Form C-111 or Form C-114 (whichever is applicable) with the wells being listed in approximately the same order as they are listed on the proration schedule.

Forms C-111 and C-114 referred to herein shall be submitted in duplicate, the original being sent to the Commission at Box 871, Santa Fe, New Mexico, the other copy being sent to Box 2045, Hobbs, New Mexico.

Form C-115 shall be submitted in accordance with Rule 1114 of the Commission's Rules and Regulations.

The full production of gas from each well shall be charged against the well's allowable regardless of what disposition has been made of the gas; provided, however, that gas used on the lease for consumption in lease houses, treaters, compressors, combustion engines and other similar lease equipment shall not be charged against the well's allowable.

DEFINITIONS

RULE 14. A gas well shall mean a well producing with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil.

RULE 15. A well producing from the Eumont Gas Pool and not classified as a gas well as defined in Rule 14 shall be classified as an oil well.

RULE 16. The term "gas purchaser" as used in these rules, shall mean any "taker" of gas either at the wellhead or at any point on the lease where connection is made for gas transportation or utilization. It shall be the responsibility of said "taker" to submit a nomination.

RULE 17. No gas, either dry gas or casinghead gas, produced from the Eumont Gas Pool shall be flared or vented unless specifically authorized by order of the Commission after notice and hearing.

RULE 18. Oil wells producing from the Eumont Gas Pool shall be allowed to produce a volume of gas each day not exceeding the daily normal unit oil allowable multiplied by 10,000; provided, however, that such well shall not be allowed to produce oil in excess of the normal unit allowable as ordered by the Commission under the provisions of Rule 505.

PROVIDED FURTHER, That special pool rules applicable to the Arrow Gas Pool be, and the same hereby are promulgated as follows:

**SPECIAL RULES AND REGULATIONS
FOR THE ARROW GAS POOL**

Well Spacing and Acreage Requirements for Drilling Tracts.

RULE 1. Any well drilled a distance of one mile or more outside the boundary of the Arrow Gas Pool shall be classified as a wildcat well. Any well drilled less than one mile outside the boundary of the Arrow Gas Pool shall be spaced, drilled, operated and prorated in accordance with the regulations in effect in the Arrow Gas Pool.

RULE 2. Each well drilled or recompleted within the Arrow Gas Pool on a standard proration unit after the effective date of this rule shall be drilled not closer than 1980 feet to any boundary line of the tract nor closer than 330 feet to a quarter-quarter section line or subdivision inner boundary line. Any well drilled to and producing from the Arrow Gas Pool prior to the effective date of this order at a location conforming to the spacing requirements effective at the time said well was drilled shall be considered to be located in conformance with this rule.

RULE 3. The Secretary of the Commission shall have authority to grant exception to the requirements of Rule 2 without notice and hearing where application has been filed in due form and the necessity for the unorthodox location is based on topographical conditions or is occasioned by the recompletion of a well previously drilled to another horizon.

Applicants shall furnish all operators within a 1980 foot radius of the subject well a copy of the application to the Commission, and applicant shall include with his application a list of names and addresses of all operators within such radius, together with a stipulation that proper notice has been given said operators at the addresses given. The Secretary of the Commission shall wait at least 20 days before approving any such unorthodox location, and shall approve such unorthodox location only in the absence of objection of any offset operators. In the event an operator objects to the unorthodox location the Commission shall consider the matter only after proper notice and hearing.

RULE 4. The provisions of Statowide Rule 104, Paragraph (k), shall not apply to the Arrow Gas Pool located in Lea County, New Mexico.

GAS ALLOCATION

RULE 5. (a) The acreage allocated to a gas well for proration purposes shall be known as the gas proration unit for that well. For the purpose of gas allocation in the Arrow Gas Pool, a standard proration unit shall consist of between 632 and 648 contiguous surface acres substantially in the form of a square which shall be a legal subdivision (section) of the U. S. Public Land Surveys with a well located at least 1980 feet from the nearest property lines; provided, however, that a non-standard proration unit may be

formed after notice and hearing by the Commission, or under the provisions of Paragraph (b) of this Rule.

The allowable production from any non-standard gas proration unit as compared with the allowable production therefrom if such tract were a standard unit shall be in the ratio of the area of such non-standard proration unit expressed in acres to 640 acres. Any gas proration unit containing between 632 and 648 acres shall be considered to contain 640 acres for the purpose of computing allowables.

In establishing a non-standard gas proration unit the location of the well with respect to the two nearest boundary lines thereof shall govern the maximum amount of acreage that may be assigned to the well for the purposes of gas proration; provided, however, that any well drilled to and producing from the Arrow Gas Pool, as defined herein, prior to the effective date of this order at a location conforming with the spacing requirements effective at the time said well was drilled shall be granted a tolerance not exceeding 330 feet with respect to the required distances from the boundary lines. The maximum acreage which shall be assigned with respect to the well's location shall be as follows:

<u>Location</u>	<u>Maximum Acreage</u>
660' - 660'	160 acres
660' - 1980'	320 acres

(b) The Secretary of the Commission shall have authority to grant an exception to Rule 5 (a) without notice and hearing where application has been filed in due form and where the following facts exist and the following provisions are complied with;

1. The non-standard gas proration unit consists of contiguous quarter-quarter sections and/or lots.
2. The non-standard gas proration unit lies wholly within a single governmental section.
3. The entire non-standard gas proration unit may reasonably be presumed to be productive of gas.
4. The length or width of the non-standard gas proration unit does not exceed 5280 feet.
5. The applicant presents written consent in the form of waivers from (a) all operators owning interests in the quarter sections in which any part of the non-standard gas proration unit is situated and which acreage is not included in said non-standard gas proration unit, and (b) all operators owning interests within 1500 feet of the well to which such gas proration unit is proposed to be allocated.
6. In lieu of paragraph 5 of this rule, the applicant may furnish proof of the fact that said offset operators were notified by registered mail of his intent to form such non-standard gas proration unit. The Secretary of the Commission may approve the application if, after a period of 30 days following the mailing of said notice, no operator has made objection to formation of such non-standard gas proration unit.

RULE 6. (a) The Commission after notice and hearing, shall consider the nominations of gas purchasers from the Arrow Gas Pool and other relevant data and shall fix the allowable production of the Arrow Gas Pool.

(b) The allowable assigned to any well capable of producing its normal gas allowable in the Arrow Gas Pool shall be the same proportion of the total remaining allowable allocated to said pool after deducting allowables of marginal wells that the number of acres contained in the gas proration unit for that well bears to the acreage contained in all gas proration units assigned to non-marginal wells in the Arrow Gas Pool.

RULE 7. At least 30 days prior to the beginning of each gas proration period the Commission shall hold a hearing after due notice has been given. The Commission shall cause to be submitted by each gas purchaser its "Preliminary Nominations" of the amount of gas which each in good faith actually desires to purchase within the ensuing proration period, by months from the Arrow Gas Pool. The Commission shall consider the "Preliminary Nominations" of purchasers, actual production, and such other factors as may be deemed applicable in determining the amount of gas that may be produced without waste within the ensuing proration period. "Preliminary Nominations" shall be submitted on a form prescribed by the Commission.

RULE 8. In the event a gas purchaser's market shall have increased or decreased, he may file with the Commission prior to the 10th day of the month a "supplemental" nomination, showing the amount of gas he actually in good faith desires to purchase during the ensuing proration month from the Arrow Gas Pool. The Commission shall hold a public hearing between the 15th and 20th days of each month to determine the reasonable market demand for gas for the ensuing proration month, and shall issue a proration schedule setting out the amount of gas which each well may produce during the ensuing proration month.

Included in the monthly proration schedule shall be (a) a summary of the total pool allocation for that month showing nominations, and adjustments made for underage or overage applied from a previous month, (b) a tabulation of the net allowable, and production for the second preceding month together with a cumulative overage or underage computation, (c) a tabulation of the current and net allowables for the preceding month, (d) a tabulation of current monthly allowables for the ensuing proration month, and (e) a tabulation of the acreage assigned each well together with a tabulation of the acreage factor assigned each well. For the purpose of allocation a proration unit of 640 acres shall be assigned an acreage factor of 4.00; a proration unit of 160 acres a factor of 1.00, etc.

"Supplemental Nominations" shall be submitted on a form prescribed by the Commission.

The Commission shall include in the proration schedule the gas wells in the Arrow Gas Pool delivering to a gas transportation facility, or lease gathering system, and shall include in the proration schedule of the Arrow Gas Pool any well which it finds it being unreasonably discriminated against through denial of access to a gas transportation facility, which is reasonably capable of handling the type of gas produced by such well. The total allowable to be allocated to the pool each month shall be equal to the sum of the preliminary or supplemental nominations (whichever is applicable) together with any adjustment which the Commission deems advisable.

If during a proration month the acreage assigned a well is increased the operator shall notify the Proration Manager in writing (Box 2045, Hobbs, New Mexico) of such increase. The increased allowable assigned the gas proration unit for the well shall be effective on the first day of the month following receipt of the notification by the Proration Manager.

BALANCING OF PRODUCTION

RULE 9. Underproduction: The dates 7:00 a.m., January 1, and 7:00 a.m., July 1, shall be known as balancing dates and the periods of time bounded by these dates shall be

known as gas proration periods. The amount of current gas allowable remaining unproduced at the end of each proration period shall be carried forward to and may be produced during the next succeeding proration period in addition to the normal gas allowable for such succeeding period; but whatever amount thereof is not made up within the first succeeding proration period shall be cancelled.

If it appears that such continued underproduction has resulted from inability of the well to produce its allowable, it may be classified as a marginal well and its allowable reduced to the well's ability to produce.

If at the end of a proration period a marginal well has produced more than the total allowable assigned a non-marginal unit of corresponding size, the marginal well shall be reclassified as a non-marginal well and its allowable adjusted accordingly.

If during a proration period a marginal well is reworked or recompleted in such a manner that its productive capacity is increased to the extent that it should be reclassified as a non-marginal well, the reclassification shall be effective on the first day of the proration month following the date of recompletion.

The Proration Manager may reclassify a well at any time if production data or deliverability tests reflect the need for such a reclassification.

RULE 10. Overproduction: A well which has produced a greater amount of gas than was allowed during a given proration period shall have its allowable for the first succeeding proration period reduced by the amount of such overproduction and such overproduction shall be made up within the first succeeding proration period. If, at the end of the first succeeding proration period, the well is still overproduced, and has not been in balance since the end of the preceding proration period, then it shall be shut in and its current monthly allowable charged against said overproduction until the well is in balance. If, at any time, a well is overproduced an amount equaling six times its current monthly allowable, it shall be shut in until it is in balance.

The Commission may allow overproduction to be made up at a lesser rate than would be the case if the well were completely shut in upon a showing at public hearing after due notice that complete shut in of the well would result in material damage to the well.

GRANTING OF ALLOWABLES.

RULE 11. No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease.

RULE 12. Allowables to newly completed gas wells shall commence on the date of connection to a gas transportation facility, as determined from an affidavit furnished to the Commission (Box 2045, Hobbs, New Mexico) by the purchaser, or the date of filing of Form C-104, and Form C-110 and the plat described above, whichever date is the later.

REPORTING OF PRODUCTION

RULE 13. The monthly gas production from each gas well shall be metered separately and the gas production therefrom shall be reported to the Commission on Form C-115 so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was produced. The operator shall show on such report what disposition has been made of the gas produced.

Order No. R-520

Each purchaser or taker of gas in the Arrow Gas Pool shall submit a report to the Commission so as to reach the Commission on or before the 20th day of the month next succeeding the month in which the gas was purchased or taken.

Such report shall be filed on either Form C-111 or Form C-114 (whichever is applicable) with the wells being listed in approximately the same order as they are listed on the proration schedule.

Forms C-111 and C-114 referred to herein shall be submitted in duplicate, the original being sent to the Commission at Box 871, Santa Fe, New Mexico, the other copy being sent to Box 2045, Hobbs, New Mexico.

Form C-115 shall be submitted in accordance with Rule 1114 of the Commission's Rules and Regulations.

The full production of gas from each well shall be charged against the well's allowable regardless of what disposition has been made of the gas; provided, however, that gas used on the lease for consumption in lease houses, treaters, compressors, combustion engines and other similar lease equipment shall not be charged against the well's allowable.

DEFINITIONS

RULE 14. A gas well shall mean a well producing with a gas-oil ratio in excess of 10,000 cubic feet of gas per barrel of oil.

RULE 15. A well producing from the Arrow Gas Pool and not classified as a gas well as defined in Rule 14 shall be classified as an oil well.

RULE 16. The term "gas Purchaser" as used in these rules, shall mean any "taker" of gas either at the wellhead or at any point on the lease where connection is made for gas transportation or utilization. It shall be the responsibility of said "taker" to submit a nomination.

RULE 17. No gas, either dry gas or casinghead gas, produced from the Arrow Gas Pool shall be flared or vented unless specifically authorized by order of the Commission after notice and hearing.

RULE 18. Oil wells producing from the Arrow Gas Pool shall be allowed to produce a volume of gas each day not exceeding the daily normal unit oil allowable multiplied by 10,000; provided, however, that such well shall not be allowed to produce oil in excess of the normal unit allowable as ordered by the Commission under the provisions of Rule 505.

EXHIBIT "A"

Horizontal limits of the Jalmat Gas Pool

Township 21 South, Range 36 East

All of Section 31
SW/4 of Section 32
All of Secs. 33 and 34

Township 22 South, Range 35 East
E/2 Section 13

Township 22 South, Range 36 East

All of Secs. 3 through 10, inclusive.
W/2 Sec. 11
W/2 Section 14
All of Secs. 15 through 18, inclusive
NE/4 Sec. 19
All of Secs. 20 through 23, inclusive
W/2 Sec. 24
All of Secs. 25 through 29, inclusive
All of Secs. 32 through 36, inclusive

Township 22 South, Range 37 East

SW/4 Sec. 31

Township 23 South, Range 36 East

All of Secs. 1 through 4, inclusive
N/2 and SE/4 Sec. 5
E/2 Sec. 8
All Secs. 9 through 16, inclusive
NE/4 Sec. 17
All Secs. 21 through 27, inclusive
E/2 Sec. 28
E/2 Sec. 33
All Secs. 34, 35 and 36

Township 23 South, Range 37 East

All Secs. 6, 7, S/2 Sec. 8
All Secs. 17 through 21, inclusive
All Secs. 28 through 33, inclusive

Township 24 South, Range 36 East

All of Secs. 1, 2, and 3
E/2 Sec. 4
NE/4 Sec. 9
N/2, SE/4 Sec. 10
All of Secs. 11 through 14, inclusive
E/2 Sec. 15
All Secs. 22 through 26, inclusive
E/2 Sec. 27
E/2 Sec. 34
All Secs. 35 and 36

Township 24 South, Range 37 East

All of Secs. 5, 6, 7 and 8
W/2 Sec. 9
W/2 Sec. 16
All of Secs. 17 through 23, inclusive
All of Secs. 26 through 35, inclusive

Township 25 South, Range 36 East

All of Sec. 1
N/2 Sec. 2
All of Secs. 12, 13, 24 and 25
NE/4 Sec. 36

Township 25 South, Range 37 East

All Sec. 2 through 33, inclusive
W/2 Sec. 34

Exhibit "A" (Cont'd)

Township 26 South, Range 37 East

W/2 Sec. 3

All Secs. 4 through 9, inclusive

W/2 Sec. 10

All of Secs. 15 through 22, inclusive

All Secs. 27, 28 and 29

N/2, SE/4 Sec. 30

E/2 Sec. 31

All of Secs. 32, 33 and 34

EXHIBIT "B"

Horizontal limits of the Eumont Gas Pool

Township 19 South, Range 36 East

All of Secs. 12, 13, 14, 23, 24, 25, 26

E/2 Sec. 27

E/2 Sec. 34

All of Secs. 35 and 36

Township 19 South, Range 37 East

W/2 Sec. 4

E/2 Sec. 5

All of Secs. 7, 8, 17, 18, 19, 20

W/2 Sec. 9

W/2 Sec. 21

W/2 Sec. 27

All of Secs. 28, 29, 30, 31, 33 and 34

Township 20 South, Range 36 East

All of Secs. 1, 2

E/2 Sec. 3

E/2 Sec. 10

All of Secs. 11, 12, 13 and 14

NE/4 Sec. 15

N/2 and SE/4 Sec. 23

All of Secs. 24 and 25

E/2 Sec. 26

E/2 Sec. 35

All Sec. 36

Township 20 South, Range 37 East

W/2 Sec. 2

All of Secs. 3 through 10, inclusive

W/2 Sec. 11

All of Secs. 15 through 22, inclusive

S/2 Sec. 23

All of Secs. 26 through 35, inclusive

W/2 Sec. 36

Township 21 South, Range 35 East

All of Sec. 1

SE/4 Sec. 2

Exhibit "B" (Cont'd)

Township 21 South, Range 35 East (cont'd)

NE/4 Sec. 11
All of Sec. 12
All of Secs. 13 and 24

Township 21 South, Range 36 East

All of Secs. 1 through 21, inclusive
N/2 and SW/4 Sec. 22
W/2 Sec. 27
All of Secs. 28, 29 and 30
N/2 and SE/4 Sec. 32

Township 21 South, Range 37 East

All of Secs. 7 and 18

EXHIBIT "C"

Township 21 South, Range 36 East

SE/4 Sec. 24
All Sec. 25
E/2 Sec. 26
NE/4 and S/2 Sec. 35
All Sec. 36

Township 22 South, Range 36 East

All of Secs. 1 and 2
NE/4 Sec. 11
All of Sec. 12
N/2 and SE/4 Sec. 13

Township 22 South, Range 37 East

W/2 Sec. 7
All Sec. 18
N/2 Sec. 19

EXHIBIT "D"

Horizontal limits of the Eunice-Monument Oil Pool

Township 19 South, Range 36 East

E/2 Sec. 12
All of Sec. 13
All Secs. 23 through 27, inclusive
All Secs. 34, 35 and 36

Township 19 South, Range 37 East

SW/4 Sec. 3
S/2 Sec. 4
All of Secs. 7 and 8
W/2 Sec. 9
W/2 Sec. 16
All Secs. 17 through 21, inclusive
S/2 Sec. 27
All Secs. 28 through 34, inclusive

Exhibit "D" (Cont'd)

Township 20 South, Range 36 East
All Secs. 1, 2 and 3
All Secs. 10 through 14, inclusive
E/2 Sec. 15
All Secs. 23 through 26, inclusive
E/2 Sec. 27
All Secs. 35 and 36

Township 20 South, Range 37 East
All Secs. 3 through 10, inclusive
All Secs. 15 through 21, inclusive
W/2 Sec. 22
All Secs. 29 through 33, inclusive

Township 21 South, Range 35 East
All Secs. 1, 12, 13, 24
E/2 Sec. 25

Township 21 South, Range 36 East
SW/4 Sec. 1
All of Secs. 2 through 11, inclusive
W/2 Sec. 12
W/2 Sec. 13
All Sec. 14 through 22, inclusive
NW/4 Sec. 23
W/2 Sec. 27
All Secs. 28, 29 and 30
N/2 and SE/4 Sec. 32
All Sec. 33
W/2 Sec. 34

EXHIBIT "E"

Horizontal limits of the Cooper-Jal Oil Pool

Township 23 South, Range 36 East
All of Secs. 4, 5, 8, 9, 15, 16, 17,
20, 21, 22, 27, 28, 33 and 34

Township 24 South, Range 36 East
W/2 Sec. 2
All of Secs. 3 and 4
N/2 Sec. 9
All Sec. 10
W/2 Sec. 11
SW/4 Sec. 13
All Secs. 14 and 15
All Secs. 22, 23
NW/4 and W/2 SW/4 Sec. 24
W/2 Sec. 25
All Secs. 26, 27, 34 and 35
W/2 Sec. 36

Township 25 South, Range 36 East
All Secs. 1, 2, 3, 11, 12, 13, 14, 23,
24, 25, 26 and 36

Township 25 South, Range 37 East

SW/4 Sec. 6
W/2 Sec. 7
W/2 Sec. 18
W/2 and W/2 E/2 Sec. 19
W/2 Sec. 30
All Sec. 31
SW/4 Sec. 32

EXHIBIT "F"

Horizontal limits of the Langlie-Mattix Oil Pool

Township 23 South, Range 36 East

All of Secs. 1, 2, 3, 10, 11, 12, 13,
14, 23, 24, 25, 26, 35 and 36

Township 23 South, Range 37 East

W/2 Sec. 6
All of Secs. 7, 18, 19
W/2 W/2 Sec. 26
All Sec. 27
S/2 Sec. 28
All Secs. 29 through 35, inclusive

Township 24 South, Range 36 East

All Sec. 1
E/2 Sec. 2
E/2 Sec. 11
All Sec. 12
N/2 and SE/4 Sec. 13
E/2 and E/2 SW/4 Sec. 24
E/2 Sec. 25
E/2 Sec. 36

Township 24 South, Range 37 East

All of Secs. 2 through 11, inclusive
All of Secs. 14 through 23, inclusive
SW/4 Sec. 25
All Secs. 26 through 35, inclusive
W/2 Sec. 36

Township 25 South, Range 37 East

All of Secs. 2 through 5, inclusive
N/2 and SE/4 Sec. 6
E/2 Sec. 7
All of Secs. 8 through 11, inclusive
W/2 Sec. 13
All Secs. 14 through 17, inclusive
E/2 Sec. 18
E/2 E/2 Sec. 19
All Secs. 20 through 23, inclusive
W/2 Sec. 24
All Sec. 25

Exhibit "F" (Cont'd)

Township 25 South, Range 37 East (Cont'd)

All Secs. 26 through 29, inclusive

E/2 Sec. 30

N/2, SE/4 Sec. 32

All Secs. 33, 34 and 35

W/2 Sec. 36

Township 26 South, Range 37 East

NW/4 Sec. 1

NE/4 Sec. 2

EXHIBIT "G"

Horizontal limits of the South Eunice Oil Pool

Township 21 South, Range 35 East

E/2 Sec. 36

Township 21 South, Range 36 East

All Sec. 31

SW/4 Sec. 32

Township 22 South, Range 35 East

E/2 Sec. 1

Township 22 South, Range 36 East

W/2 Sec. 3

All Secs. 4 through 10, inclusive

SW/4 Sec. 11

W/2 Sec. 14

All Secs. 15 through 23, inclusive

All Secs. 25 through 29, inclusive

E/2 Sec. 30

NE/4 Sec. 31

All Secs. 32 through 36, inclusive

EXHIBIT "H"
GAS-OIL RATIO TEST SCHEDULE

NAME OF POOL	GOR LIMIT	TEST PERIOD			DEADLINE FOR FILING FORM C-116
<u>Oil Pools</u>					
Arrowhead	3500	Nov.	Dec.		Jan. 15, 1955
Cooper-Jal	10000	Sept.			October 15, 1954
Eunice	6000	Oct.	Nov.	Dec.	January 15, 1955
Monument	3000	July	Aug.	Sept.	October 15, 1954
South Eunice	10000	Sept.	Oct.		November 15, 1954
Hardy	10000	Sept.	Oct.		November 15, 1954
Langlie-Mattix	10000	Sept.			October 15, 1954
Leonard	10000	Sept.			October 15, 1954
South Leonard	10000	Sept.			October 15, 1954
Penrose-Skelly	10000	Sept.	Oct.	Nov.	December 15, 1954
Rhodes	10000	Sept.	Oct.		November 15, 1954

GAS POOLS

Arrow	10000	Oct.	Nov.		December 15, 1954
Eumont	10000	Oct.	Nov.	Dec.	January 15, 1955
Jalpat	10000	Sept.	Oct.	Nov.	December 15, 1954

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

W. B. MACEY, Member and Secretary

S E A L

EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF TEXAS PACIFIC COAL & OIL COMPANY FOR AN ORDER IMMEDIATELY TERMINATING GAS PRORATIONING IN THE JALMAT GAS POOL, LEA COUNTY, NEW MEXICO, OR IN THE ALTERNATIVE, FOR AN ORDER IMMEDIATELY CANCELLING ALL ACCUMULATED UNDER-PRODUCTION; REQUIRING PURCHASERS TO INCREASE NOMINATIONS COMMENSURATE WITH ACTUAL TAKES; ESTABLISHING DELIVERABILITY AS A FACTOR IN THE PRORATION FORMULA; ESTABLISHING MAXIMUM TAKES AS TO WELLS IN THE POOL; AND SUCH OTHER ORDERS AS WILL IMMEDIATELY BRING THE POOL INTO BALANCE AND MAINTAIN SUCH BALANCE WITHOUT WASTE AND WITHOUT ABUSE OF CORRELATIVE RIGHTS.

CASE NO. _____

APPLICATION

Comes now applicant, Texas Pacific Coal & Oil Company, by its attorneys, Campbell & Russell, and states:

1. Applicant is the owner of 41.75 non-marginal gas units and 6.71 marginal gas units within the limits of the Jalmat Gas Pool, Lea County, New Mexico. All of said units involve leases from the State of New Mexico.

2. There are 389.13 gas units in the Jalmat Gas Pool and El Paso Natural Gas Company is connected to and purchases from 336.23 of said gas units, being approximately 86% of the total gas units in the field. El Paso Natural Gas Company has exclusive control over the rate of takes from each of applicant's wells in the pool.

EXHIBIT "B"

3. On January 1, 1954, the Oil Conservation Commission of New Mexico instituted gas prorationing in the then-defined limits of the pool, and for a period of 2½ years, until the last six months of 1956, allowables and production within the pool were maintained in reasonable balance. During the last six months of 1956, El Paso Natural Gas Company took from Applicant's wells amounts of gas considerably in excess of its nominations and failed to file supplemental nominations to adjust its nominations to its actual takes, resulting in excessive over-production carry over into the first proration period of 1957.

4. The Oil Conservation Commission, at the request of certain gas purchases, has to date failed to balance production at the end of each proration period as provided in the rules governing gas prorationing in the Jalmat Pool.

5. Many of the gas wells in the Jalmat Gas Pool have been and are now unable to produce the allowable assigned to them and there is now accumulated under-production in said pool which cannot be made up before the end of the current proration period.

6. During the year 1957, El Paso Natural Gas Company, by reason of over-production accumulated to wells on which it failed to supplement its nominations and due to the failure to balance production at the end of 1956 and at the end of the first six months of 1957, has drastically reduced its takes from some non-marginal wells of applicant with the result that marginal wells

(Exhibit "B")

in the Jalmat Gas Pool are in some instances being permitted to produce more gas than non-marginal wells, which results in drainage of gas from applicant's properties and a loss of gas reserves.

7. If the El Paso Natural Gas Company is required by reason of present rules governing gas prorationing in the Jalmat Gas Pool to continue to restrict production from applicant's non-marginal wells, or to shut-in said wells, applicant will continue to suffer drainage from its properties.

8. Certain of applicant's wells, even if shut-in during the balance of 1957, will enter the next proration period with over-production, and if these wells, together with other over-produced wells in the pool are shut-in, the result will be a negative allowable for the entire pool during a portion of the next proration period.

9. That during the period of gas prorationing, El Paso Natural Gas Company has consistently run gas from wells with high deliverability with the result that the method of prorationing, as now established, has meant that, during the year 1956, 40% of the wells in the pool produced 60% of the gas at an average rate of 303.725 MCF per unit, which was 58,090 MCF per unit in excess of the allowables.

10. El Paso Natural Gas Company has failed to keep individual wells of applicant in reasonable balance with each other.

11. The continuation of gas prorationing in this pool will

(Exhibit "B")

result in drainage of applicant's properties and abuse of its correlative rights, and will render impossible the reasonable marketing of dry gas from this pool even though El Paso Natural Gas Company desires to purchase and run such gas to supply its market. The present rules, as applied by the Commission, are impractical and unreasonable and will result in economic loss to applicant and the State of New Mexico as royalty owner.

WHEREFORE, applicant requests the Commission to enter its order immediately terminating gas prorationing in the Jalmat Gas Pool.

In the alternative, applicant requests the Commission to enter its order immediately cancelling all accumulated under-production and redistributing such under-production to over-produced wells in the Jalmat Gas Pool; and requiring gas purchasers to nominate a sufficient amount of gas from the pool to permit wells from which purchasers are able to take gas to have an allowable equal to their actual production, and upon this basis to thereafter balance the pool production at the end of each proration period; and establishing deliverability of gas wells as a factor in the proration formula for the pool; and establishing a maximum amount of gas which may be taken from any well in the pool during a specified period of time.

Applicant further requests the Commission to issue such further order or orders as will bring the pool immediately into

(Exhibit "B")

balance and maintain such balance without waste and without abuse
of applicant's or others' correlative rights.

Respectfully submitted,

CAMPBELL & RUSSELL

Jack M. Campbell

JMC:bb

(Exhibit "B")

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
ORDER No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on October 18, 1957, at 9 o'clock a.m. on November 14, 1957, and again at 9 o'clock a.m. on December 9, 1957, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 29th day of January, 1958, the Commission, a quorum being present, having considered the application, and the evidence adduced and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject

EXHIBIT "C"

matter thereof.

(2) That the applicant, Texas Pacific Coal & Oil Company, seeks an order in the subject case for the immediate termination of gas prorationing in the Jalmat Gas Pool, Lea County, New Mexico, or in the alternative, an order for the immediate cancellation of all underproduction accumulated to wells in the Jalmat Gas Pool as of July 1, 1957, and further, to require the gas purchases in said pool to nominate a sufficient amount of gas from the pool to permit the wells from which said purchasers are able to take gas to have an allowable equal to their actual production, and further for the establishment of a proration formula in the Jalmat Gas Pool whereby the allowables would be assigned 75 percent on the basis of deliverability times acreage and 25 per cent on the basis of acreage along; and further, for the establishment of a maximum amount of gas which may be taken from any well in the Jalmat Gas Pool during a specified period of time.

(3) That it is necessary to continue the proration of gas production from the Jalmat Gas Pool in order to prevent waste and protect correlative rights.

(4) That all underage which accrued to wells in the Jalmat Gas Pool prior to July 1, 1957, and which was not produced prior to January 1, 1958, will be cancelled and redistributed as of that date in accordance with the Special Rules and Regulations

(Exhibit "C")

for the Jalmat Gas Pool as set forth in Order No. R-520 as amended by Order No. R-967, and that the applicant has failed to prove the necessity for any additional relief in this regard.

(5) That the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula.

(6) That the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool will result in the production of a greater percentage of the pool allowable, and that it will more nearly enable the various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool.

(7) That the allowable gas production in the Jalmat Gas Pool should be allocated to the non-marginal wells in said pool in accordance with a proration formula based on seventy-five percent (75%) acreage times deliverability plus twenty-five percent (25%) acreage only.

(8) That the applicant has failed to prove the necessity for establishing a limitation on the amount of gas which may be taken from wells in the Jalmat Gas Pool in addition to the limitations presently imposed by the Spedal Rules and Regulations for the Jalmat Gas Pool.

(Exhibit "C")

(9) That the application of Texas Pacific Coal & Oil Company in the subject case should be denied in all respects except that the Special Rules and Regulations for the Jalmat Gas Pool should be amended to provide for a deliverability factor in the gas proration formula.

IT IS THEREFORE ORDERED:

(1) That the application of Texas Pacific Coal and Oil Company in Case No. 1327 be and the same is hereby denied in all respects except that portion of the application concerning the inclusion of a deliverability factor in the gas proration formula for the Jalmat Gas Pool.

(2) That all orders heretofore issued by the Commission creating non-standard gas proration units in the Jalmat Gas Pool, which orders provide in substance that the unit well be granted an allowable in the proportion that the acreage dedicated to the well bears to a standard gas proration unit in the Jalmat Gas Pool, be and the same are hereby amended, effective July 1, 1958, to read as follows: That the unit be assigned an "Acreage Factor" for allowable purposes to be determined by dividing the acreage dedicated to the well by 160 acres.

(3) That Rule 5, and Ruly 6, and Rule 12 of the Special Rules and Regulations for the Jalmat Gas Pool as set forth in Order No. R-520 and as amended by Order No. R-967, be and the same are hereby revised, effective July 1, 1958, to read as follows:

(Exhibit "C")

SPECIAL RULES AND REGULATIONS FOR THE
JALMAT GAS POOL

RULE 5. (a) (first paragraph) No change

(second paragraph) Revise to read as follows:

A non-standard gas proration unit shall be assigned an "Acreage Factor" for proration purposes to be determined by dividing the acreage in the non-standard gas proration unit by 160 acres. Any gas proration unit containing between 632 and 648 acres shall be considered to contain 640 acres for the purpose of computing allowables.

(third paragraph) No change

(b) No change.

RULE 6. (a) The Commission, after notice and hearing, shall consider the nominations of the gas purchasers from the Jalmat Gas Pool and other relevant data in fixing the allowable production for the pool.

(b) The monthly allowable allocation to the Jalmat Gas Pool shall be divided and allocated among the wells in the pool which are entitled to an allowable in the manner hereinafter set forth.

A marginal well shall be assigned an allowable equal to its maximum production during any month of the preceding gas proration period.

The pool allowable remaining after deducting the total allowable assigned to marginal wells shall be allocated among the non-marginal wells in the pool as follows:

(1) Twenty-five percent (25%) of the remaining pool allowable shall be allocated among the non-marginal wells in the pool in the proportion that each well's "Acreage Factor" bears to the total "Acreage Factor" for all non-marginal wells in the pool.

(2) Seventy-five percent (75%) of the remaining pool allowable shall

(Exhibit "C")

be allocated among the non-marginal wells in the pool in the proportion that each well's "AD Factor" bears to the total "AD Factor" for all non-marginal wells in the pool.

A well's "Acreage Factor" shall be determined by dividing the acreage assigned to the well by 160 acres. The "Acreage Factor" shall be determined to the nearest one-hundredth of a unit.

A well's "AD Factor" shall be determined by multiplying the well's "Acreage Factor" by its "Calculated Deliverability" (expressed in MCF per day). The "AD Factor" shall be computed to the nearest whole unit. In those instances where there is more than one well on a proration unit the "Calculated Deliverability" for the unit shall be determined by averaging the "Calculated Deliverabilities" of all the wells on the unit.

(c) Annual deliverability tests shall be taken on all gas wells in the Jalmat Gas Pool in a manner and at such time as the Commission may prescribe. The results of such tests shall determine a well's "Calculated Deliverability." Deliverability tests taken during 1958 shall be used in calculating allowables for wells in the Jalmat Gas Pool until July 1, 1959. Subsequent annual deliverability tests shall be used for each twelve-month period thereafter.

(d) No well shall be assigned an allowable until an approved deliverability test has been filed with the Commission.

(e) The Secretary of the Commission shall have authority to exempt marginal wells from the requirement of taking an annual deliverability test in those instances where the deliverability of the well is of such low volume as to have no significance in the determination of the well's allowable.

(f) Retests and tests taken after recompletion or workover shall be taken in the same manner as provided in subparagraph (c) above, and any change in the well's "Calculated Deliverability" resulting therefrom shall become effective:

(1) On the date of reconnection after workover, such date to be determined from Form C-104 as filed by the operator; or

(2) A date 45 days prior to the date upon which a well's deliverability and shut-in pressure test is reported to the Commission on Form C-122-C; or

(Exhibit "C")

(3) A date 45 days prior to the receipt and approval of Form C-104 by the Commission's office (Box 2045, Hobbs, New Mexico);

(Form C-104 shall specify the exact nature of the workover or remedial work; if the nature of the work cannot be explained on Form C-104, in that event, Form C-103 shall also be filed in accordance with Rule 1106 of the Commission's Statewide Rules and Regulations. Form C-128 (Well Location and Acreage Dedication Plat) shall be submitted by the operator at any time there is a change in the acreage dedicated to said well);

RULE 12. Allowables to newly completed gas wells shall commence:

(a) On the date of connection to a gas transportation facility, such date to be determined from an affidavit furnished to the Commission (Box 2045, Hobbs, New Mexico) by the purchaser;

(b) the latest filing date of Form C-104, C-110 or C-128; or

(c) a date 45 days prior to the date upon which the well's deliverability and shut-in pressure test is reported to the Commission on Form C-122-C;

whichever date is later.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

MURRAY E. MORGAN, Member

A. L. PORTER, JR., Member & Secretary

S E A L

1r/

(Exhibit "C")

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL
& OIL COMPANY FOR AN ORDER IMMEDI-
ATELY TERMINATING GAS PRORATIONING
IN THE JALMAT GAS POOL; OR IN THE
ALTERNATIVE, REVISING THE SPECIAL
RULES AND REGULATIONS FOR THE JALMAT
GAS POOL IN LEA COUNTY, NEW MEXICO.

APPLICATION FOR REHEARING

TO THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO:

COMES NOW CONTINENTAL OIL COMPANY, a Delaware Corporation,
duly authorized to transact business in the State of New Mexico,
hereinafter sometimes referred to as "applicant", and applies
for a rehearing in the above entitled and numbered case and in
support thereof would respectfully show unto the New Mexico Oil
Conservation Commission, hereinafter referred to as "Commission",
the following:

1. This applicant owns and operates oil and gas leases and
gas wells within the limits of the Jalmat Gas Pool in Lea County,
New Mexico.

EXHIBIT "D"

2. This applicant participated in and presented testimony to the Commission in the hearing on the application of Texas Pacific Coal & Oil Company in the above styled and numbered case and as an operator in the Jalmat Gas Pool was affected by Order No. R-1092-A entered by the Commission under date of January 29, 1958.

3. This applicant believes and therefore alleges that Order No. R-1092-A aforesaid was erroneous, illegal and is invalid and by reason thereof a rehearing is requested in respect to that portion of said Order No. R-1092-A which provides that effective July 1, 1958, a deliverability factor shall be included in the gas proration formula of the Jalmat Gas Pool and the succeeding portions of said Order carrying into effect the decision of the Commission that deliverability shall be included in the proration formula subsequent to July 1, 1958, and as grounds therefor states:

(a) That the application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 in Case No. 673 of this Commission entered on the 12th day of August, 1954, and therefore should not have been entertained by the Commission and cannot be made the basis of a valid Order in Case No. 1327 in so far as the inclusion of deliverability in the proration formula is concerned.

(Exhibit "D")

(b) That the evidence introduced in this proceedings provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis provided in Order No. R-1092-A for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. Texas Pacific Coal & Oil Company was a party to and actively participated in the hearing in Case No. 673 in which the inclusion of deliverability as a factor in the proration formula was vigorously advocated and considered by the Commission, and Order No. R-520 was entered denying the request for the inclusion of deliverability in said formula. No appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered in said Case No. 673. On the basis of the record in this case, the Commission is without authority to modify or change the decision as reached in Case No. 673.

(c) That the inclusion of deliverability as a factor in the Jalmat Gas Pool proration formula as ordered by the Commission in Order No. R-1092-A is predicated on a finding by this Commission "that the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts

(Exhibit "D")

dedicated to said wells". This applicant respectfully alleges that this finding of the Commission is contrary to and wholly without support in the evidence and is therefore invalid and void. In further support of the grounds here alleged there is attached hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the fifty-eight tracts which were the subject of testimony and exhibits presented by this applicant and other operators at the hearing in this case before the Commission on December 9, 1957, and the deliverability of the fifty-eight gas wells located on said tracts. Said exhibit is based upon evidence in the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, this applicant will present further evidence in this regard but asserts that on the evidence received by the Commission at the December 9, 1957 hearing in this case it is clearly shown that no such correlation exists.

(d) That Order No. R-1092-A is invalid in that even though it be assumed, as found by the Commission, it has been proved "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said finding provides no basis authorized by the statutes of New Mexico for modification

(Exhibit "D")

of the pre-existing acreage formula for proration of gas produced from said pool.

(e) That the Commission has considered factors not permitted by the statutes of New Mexico in arriving at its decision which was the basis of Order No. R-1092-A. It is apparent from said Order that it was predicated in part upon (1) a finding that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in the production of a greater percentage of the pool allowable, and (2) that such inclusion of a deliverability factor would more nearly enable various gas purchasers to meet the market demand for gas in the Jalmat Gas Pool. Neither of said considerations provides any legal basis for the allocation of production under the statutes of New Mexico.

(f) That Order No. R-1092-A results in economic waste in that it will require the expenditure of an excess of Four Hundred Thousand Dollars (\$400,000.00) by this applicant to increase the deliverability of the gas wells operated by it in this pool in an effort to protect its correlative rights, although the ultimate recovery from the tracts operated by this applicant will not be appreciably increased thereby.

(g) That Order No. R-1092-A will result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for some ten to twenty years and their condition

(Exhibit "D")

is such that the action required of a prudent operator under Order No. R-1092-A will necessarily result in underground waste of natural gas and abuse of correlative rights of the owners of many of said wells.

(h) That the Order No. R-1092-A is invalid in that the Commission would have authority to change its existing proration order for the Jalmat Gas Pool only upon proof by the applicant in this case, Texas Pacific Coal & Oil Company, by a preponderance of the evidence, that either (1) waste would be reduced or eliminated, or (2) correlative rights of the owners in the Jalmat Gas Pool would be protected to a greater degree by the inclusion of deliverability as a factor in said proration formula. The burden of proof so assumed by Texas Pacific Coal & Oil Company as such applicant was not discharged by it.

(i) That Order No. R-1092-A results in irreparable injury to the correlative rights of this applicant and deprives this applicant of its property without due process of law in that it will permit production by offset operators of natural gas underlying the tracts owned and/or operated by this applicant without affording compensating counter-drainage from other adjoining tracts, and will prevent this applicant from producing the recoverable gas in place in the Jalmat Gas Pool underlying the respective tracts upon which the wells operated by this applicant are located.

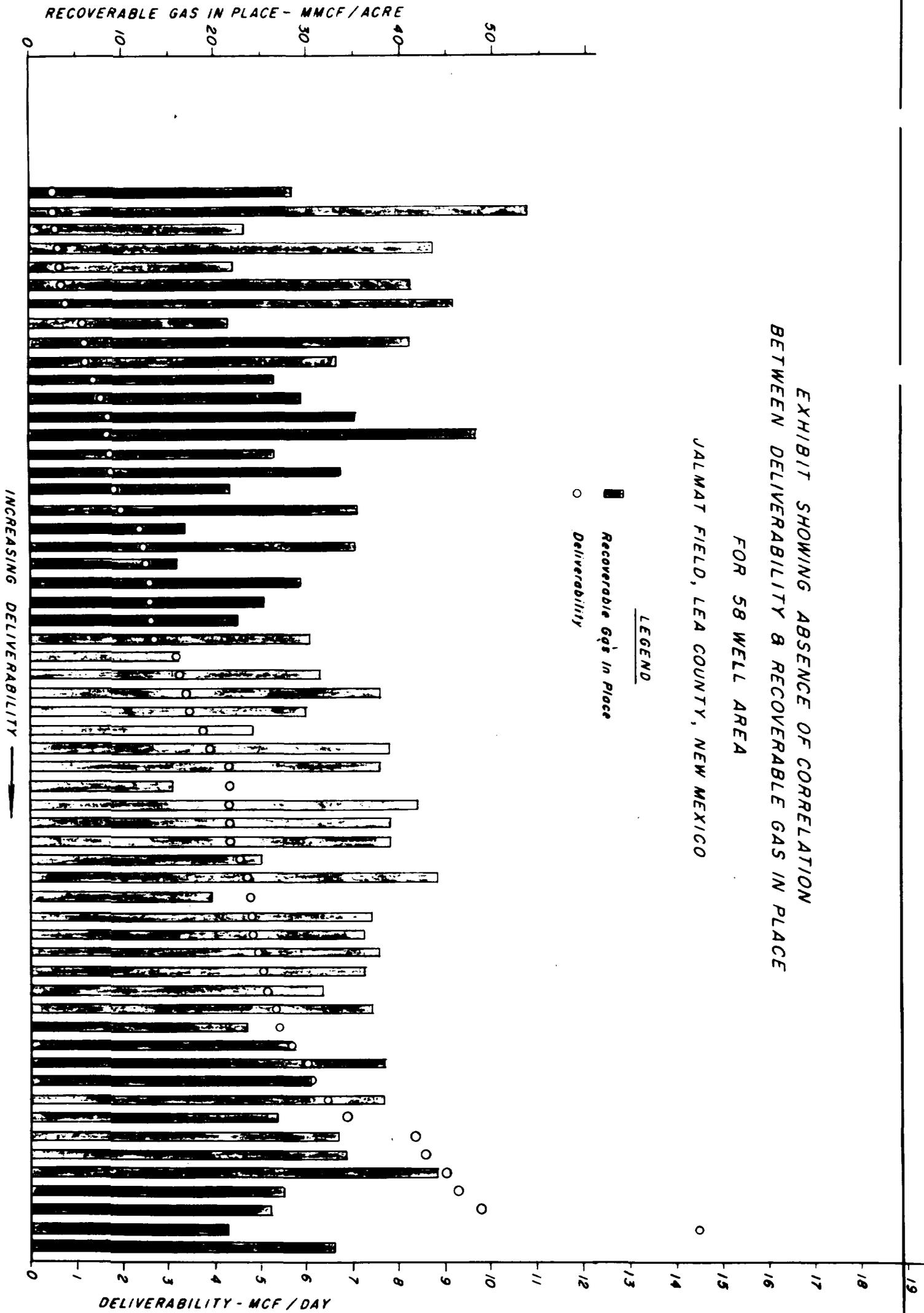
(Exhibit "D")

(j) That Order No. R-1092-A is unreasonable, arbitrary and discriminatory and the effect of said order is to confiscate and deprive this applicant of its property without due process of law contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States and of Article II, Section 18 of the Constitution of the State of New Mexico. Under the provisions of Order No. R-520, as amended, and in reliance upon said order, this applicant has performed drilling operations, recompletion operations, and has expended large sums of money on its properties in the Jalmat Gas Pool, acquiring vested property rights therein prior to the issuance of Order No. R-1092-A.

(k) That as a result of the aforesaid expenditures and other actions taken by this applicant in drilling operations, recompletion operations, and other actions taken in good faith and in reliance upon the existing proration rules as set forth in Order No. R-520, as amended, the Commission is as a matter of equity and justice, estopped from amending said Order No. R-520, as amended, to include a deliverability factor in the allocation formula, which amendment would discriminate against this applicant.

(l) That Order No. R-1092-A, as regards the findings and provisions therein which purport to revise and change the existing allocation formula for the Jalmat Gas Pool as set forth and provided for in Order No. R-520 as amended by Order No. R-967,

(Exhibit "D")



BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-B

APPLICATION OF TEXAS PACIFIC COAL
& OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION FOR REHEARING

BY THE COMMISSION:

This cause came on for consideration for a rehearing in Case No. 1327, Order No. R-1092-A, dated January 29, 1958, upon the petition of Skelly Oil Company, Cities Service Oil Company, The Texas Company, Sun Oil Company, Humble Oil & Refining Company, The Atlantic Refining Company, Continental Oil Company, Samedan Oil Corporation, Shell Oil Company, Sinclair Oil & Gas Company, Amerada Petroleum Corporation, Standard Oil Company of Texas, Tidewater Oil Company, and Pan-American Petroleum Corporation.

NOW, on this 19th, day of February, 1958, the Commission, a quorum being present, having considered the petitions for rehearing,

HEREBY ORDERS:

That the above-styled cause be reopened and a rehearing be held

EXHIBIT "E"

at 9 o'clock a. m. on March 25, 1958, at Mabry Hall, State Capitol, Santa Fe, New Mexico.

IT IS FURTHER ORDERED:

That the testimony on rehearing shall be limited to new evidence on the issues raised in the petitions for rehearing.

IT IS FURTHER ORDERED:

That Order No. R-1092-A shall remain in full force and effect pending the issuance of any further order in this case.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Signed by: Edwin L. Mechem, Chairman; Murray E. Morgan, Member;
A. L. Porter, Jr., Member & Secretary.

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(Exhibit "E")

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-C

APPLICATION OF TEXAS PACIFIC COAL
& OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on October 18, 1957, November 14, 1957, and again on December 9, 1957, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission", and this cause came on for rehearing before the Commission, upon the petition of Skelly Oil Company et al., at 9 o'clock a.m. on March 25, 1958, at Santa Fe, New Mexico.

NOW, on this 25th day of April, 1958, the Commission, a quorum being present, having considered the application, the petitions for rehearing, and the testimony and evidence adduced at the original hearings and the subsequent rehearing, and being fully advised in the premises,

EXHIBIT "F"

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission reaffirms its finding that Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula.

(3) That the provisions of Order No. R-1092-A should remain in full force and effect.

IT IS THEREFORE ORDERED:

That the provisions of Order No. R-1092-A shall remain in full force and effect.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Edwin L. Mechem, Chairman
Murray E. Morgan, Member
A. L. Porter, Jr., Member & Secretary

(S E A L)

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d), 5 and 7.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are therefore invalid and void."
3. It denies the allegations of Paragraph 6(a) through 6(l), together with all legal conclusions stated therein. It further denies the allegation in Paragraph 6 (m) that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void. It admits that the testimony referred to in Paragraph 6(m) was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
4. It denies the allegations of Paragraph 8 and it further denies that the Petitioner may, without limitation, introduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New Mexico

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

RESPONSE

Comes Now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
Campbell & Russell
P. O. Box 721
Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d), 5 and 7.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are therefore invalid and void".
3. It denies the allegations of Paragraph 6(a) through 6(m), together with all legal conclusions stated therein.
4. It denies the allegations of Paragraph 8 and it further denies that the Petitioner may, without limitation, introduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

BY: /s/ A. L. Grambling

COWAN AND LEACH
Hobbs, New Mexico

BY: /s/ Ray C. Cowan

Attorneys for Respondent
El Paso Natural Gas Company

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., AND A. S. GRENIER
Burt Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By /s/ Manuel A. Sanchez

Attorneys for the above named respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 3rd day of July 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

MOTION FOR PRE-TRIAL CONFERENCE

Comes now Respondent, Oil Conservation Commission of New Mexico, and moves the Court, pursuant to Rule 16 of the Rules of Civil Procedure, to order a pre-trial conference in this cause for the following purposes:

1. Consolidation of this Cause with Cause Nos. 16214, 16215, 16216, 16217, 16218, 16219, 16220, for the purposes of trial.
2. A determination of the nature and scope of the review.
3. The consideration of legal matters raised in the Petition for Review, particularly in Paragraphs 6(a), 6(b), 6(c), 6(e), 6(f).
4. The consideration of the transcript of testimony before the Commission and its part in the Review proceedings.
5. The necessity or desirability of amendments to the pleadings.
6. The possibility of obtaining Admissions of Fact and documents, which will avoid unnecessary proof.
7. Such other matters as may aid in the disposition of this action.

Oil Conservation Commission of New Mexico
Respondent

Oliver E. Payne

By: William J. Cooley
Attorneys for Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 9th day of September 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

MINUTES - PRE-TRIAL CONFERENCE

BE IT REMEMBERED, That on the 4th day of August, 1958, in the District Court, at Lovington, New Mexico, a pre-trial conference in matters consolidated under the above-stated number by order of the Court herein, the Honorable John R. Brand, Judge of the Fifth Judicial District, in and for Lea County, State of New Mexico, at which time there appeared the following:

JASON KELLAHIN Kellahin & Fox Box 1713, Santa Fe, N.M.	- Continental Oil Company and Amerada Petroleum Corp.
O. E. SMITH	- Humble Oil & Refining Co.
HARRY G. DIPPEL 1710 Fair Building Fort Worth, Texas	- Continental Oil Company
H. D. BUSHNELL Tulsa, Oklahoma	- Amerada Petroleum Corp.
REED ELLIOTT	- Standard Oil Co. of Texas
HOWARD G. BRATTON Hervey, Dow & Hinkle Box 547, Roswell, N.M.	
JACK M. CAMPBELL Box 721, Roswell, N.M.	- Texas Pacific Coal & Oil Co.
KIRK NEWMAN Box 867, Roswell, N.M.	- Pan American Petroleum Corp.

A. T. ADAIR
Fort Worth, Texas - Texas Pacific Coal & Oil Co.

OLIVER PAYNE
Box 871, Santa Fe, N.M. - New Mexico Oil Conservation
Commission

JUDGE MORRIS GALATZAN
El Paso, Texas

T. McCARTHY
Omaha, Nebraska

RAY C. COWAN
Cowan & Leach
Box 1526, Hobbs, N.M. - El Paso Natural Gas Company

ROBERT W. WARD
201 North Love St.
Lovington, N.M. - Permian Basin Pipeline Co.

THE COURT: Who is to lead off, gentlemen?

MR. KELLAHIN: Since this is on motion filed by Mr. Campbell and members of the Oil Conservation Commission staff, we assume they will proceed in the matter.

MR. CAMPBELL: If it please the Court, the Oil Conservation Commission has filed the original motion for pre-trial conference in this case. Briefly, the matter is brought before this Court from an Order of the New Mexico Oil Conservation Commission by eight petitioners who have petitioned the Court to review the order of the Commission. Mr. Kellahin and his group represent the petitioners; Mr. Payne represents the Oil Conservation Commission, which is one respondent, and I represent Texas Pacific Coal & Oil

Company, and Mr. Ward is appearing for Permian Basin Pipeline Company, and Mr. Cowan for El Paso Natural Gas Company.

Southern Union Gas Company is also a respondent in this case and has filed appropriate pleadings.

When we filed the motion for pre-trial conference, we had set out certain matters for which we requested the Court to consider at a pre-trial conference. Those matters have since been modified to some extent by a letter directly to the Court from Mr. Malone and then by a letter responding to that from the Oil Conservation Commission, and, as we understand it, at the present time the matters that the Court will consider at the pre-trial conference are: the matter of the consolidation of these eight cases for the purpose of hearing; the question of the part that the transcript of testimony before the Commission may play in the hearing; and basically the issues which are involved in the case which have been raised by the petitioners in their petition for review; and finally the nature and extent of the review that the Court will hear on this appeal from the Order of the New Mexico Oil Conservation Commission. The legal matters that are raised in the petition, we understand, are not to be heard at this time but we will define them if we can as between the parties so that at the time of the hearing of the case they can be heard.

If the Court please, we feel the most essential and preliminary matters that must be determined by the Court before we can proceed further in these cases is the nature and extent of a review of an order from the Oil Conservation Commission. We have briefed this question and are prepared to furnish the Court with a copy of our brief. I will do whatever the Court sees fit with what order the Court wants to take these matters up and how he wants to hear argument in connection with the legal question.

THE COURT: Have you agreed as to the propriety of consolidation?

MR. CAMPBELL: We certainly have.

MR. KELLAHIN: We certainly are, your Honor.

THE COURT: Sometimes we consolidate matters and find out that it would have been simpler and better for everybody concerned if it had been tried separately, but I take it this is not one of those sort of things.

MR. KELLAHIN: I think there is a matter raised in one question that is not raised in the others, but I think substantially they are the same.

THE COURT: Very well. I see no reason then to do other than order this consolidation, and we will treat the matters as having been consolidated. Now, Mr. Campbell, I will be glad to have you submit your brief and you may argue it at this time.

(WHEREUPON, Mr. Campbell makes argument.)

MR. CAMPBELL: I wonder if the suit can be given one number so that in the future we may proceed in that manner?

THE COURT: Yes. It will be given the number of the first matter filed.

(Mr. Ward makes observation, and Mr. Campbell and Mr. Bratton make argument.)

THE COURT: It may be, Mr. Bratton, that Mr. Campbell knows more about how I feel about this matter than you do. A matter was presented here once -- it was a suit for declaratory judgment filed by Phillips Petroleum, wasn't it, Mr. Campbell -- something similar to this I suppose. It was, I believe, a case in which the Oil Conservation Commission had made their first allocation, had not changed a previous order, isn't that right? In other words, we had a gas producing field where the owners had gone in fifteen or twenty years earlier and had acquired oil and gas leases, property rights which they had purchased, money which they had spent for developing gas property, and, as I recall it, the Oil Conservation Commission, without notice to all of the persons interested in it and concerned, had put up an order to the effect that a unit of 160 acres would be determined to be the basis on which gas might be produced under the

proration schedule. Cases were referred to, one case from Mississippi in which the legislature there had provided that, absent a public right as affected by waste, had specified that the Conservation Commission could not put up such an order without notice to all persons interested and without giving them an opportunity to be heard as to how it affected their various property rights.

It was my feeling at that time, and I expressed myself on it, to the effect that, if prior even to the creation of the Oil Conservation Commission, if I had gone to the owner of a piece of land and had taken from him an oil and gas lease for which I had paid value and had spent money in drilling one or more gas wells, and for fifteen or twenty years had been producing gas under the provisions of that lease which required me to pay him one-eighth of the proceeds of the gas produced, saved and marketed, and that under the law existing at the time I took the lease, and during all the intermediate years my rights were not affected or hampered by proration schedules and orders accompanying them which said that I had to treat my lease as 160 acres, even though it comprised only 40 acres, any act of the Legislature that purported to give the Oil Conservation Commission the right to take from me any portion of my property, without notice and without opportunity to be heard, was unconstitutional as taking my property without due process.

Now that was an off-hand remark made and that appearing in the nature of a pre-trial conference. The Oil Conservation Commission was not a party to the action. It asked permission to join as a party and it entered its appearance, and for reasons which I do not know and have no reason to inquire into nothing more was ever heard of that proceeding.

But I still have that idea. I know of no constitutional authority which will permit the Legislature to set up an administrative body to go in and redistribute property among people in accordance with some formula of its own unless that redistribution is made necessary by the public right to prevent the waste of our natural resources.

Now, where are we?

I would think further, getting to the present matter -- first, I don't believe it was mentioned, but it is my idea that the use of the Latin term "de novo" would imply in a trial de novo that the simple "preponderance" rule ought to obtain rather than the rule well known to apply to appellate procedure which specifies that the substantial evidence rule ought to apply. In my mind, de novo means simply that, even if I be restricted to the testimony taken before the Commission, that, if it be a trial de novo, that I'd be supposed to apply to the evidence the rule that the occasion be governed -- decision be reached by application of the preponderance of evidence. Certainly I feel that, if

it be necessary for the full information of the Court to determine whether or not the Commission has acted within its powers and within constitutional limitations, I would listen to new testimony. No new testimony would be accepted or heard which is merely cumulative, which was available to the parties at the time of the hearing before the Commission, but if you, Mr. Bratton, tell this Court, that we wish to urge upon you that this Commission acted without constitutional authority, or that it acted -- in other words, saying that they acted within their apparent authority, we assert the authority given by the Legislature was beyond the Legislature's power because it traverses the Constitution, and that was not argued at the hearing, and there was no testimony adduced to that effect, then in that situation I fail to see how this Court can shut its eyes to those considerations. It would otherwise have to send the matter back to the Oil Conservation Commission, and I know of no way in which I can instruct it as to what additional evidence to take.

It would be my idea that I could listen properly to testimony which was not offered or considered by the Commission, probably to testimony which was unavailable to it. I think if you gentlemen came into court and persuaded me that a change of conditions had occurred which makes the order of the Commission absurd under present conditions,

even though proper under the conditions then obtaining, that I should remand the matter to the Commission, set aside its order, remand it to take such additional testimony in view of the changed conditions as it sees fit. I do not believe that I could properly pass on the facts which might exist now and did not exist at the time the Commission considered the problem because then I would be finding facts which it is their duty to find.

I agree with Mr. Campbell that I have no authority to modify the order of the Commission, giving the word "modify" the sense that I say, "You have told these people that 160 acres is the proration unit, and I have decided that it ought to be 200 or 320." That is a modification. Certainly, if it become apparent as a mathematical matter that the engineers had used an improper formula -- as engineers have been known to do -- multiplied 2 by 2 and came up with 3 -- this Court could modify an order based upon that sort of an assumption, the same as a court might correct a clerical error. And as I also stated that, if I thought, as against one of the respondents, the Commission's order was capricious, irrational or otherwise untenable, I might be inclined to disapprove that particular order and, finding the other orders not subject to such exception, confirm them.

So, what testimony I propose to listen to depends upon your pleadings and your specifications, and I will certainly

expect all parties, in the event they desire to introduce additional testimony, to set out the gist of what testimony they propose to offer and the reason for doing so. And, I, of course, am not called upon to rule whether or not I will listen to additional testimony until I find out what additional testimony is proposed. That could be done and passed on well in advance of the actual trial; in other words, at a second pre-trial conference.

You will, then, in your application for another pre-trial conference, say, "We request that the Court listen to testimony of A, B and C, petroleum engineers, whose testimony will be to the effect that so and so and so and so and so, and this testimony we want to present because it was not before the Conservation Commission; we want to use it because of some reason -- either it was not then available, conditions have changed -- it is our feeling that the Court can understand whether or not the previous order was compatible with the Commission's powers.

You refer to Swisher v. Darden. I don't remember what the Supreme Court said about that but I did take testimony, I presume without objections. (Note. The testimony before the Board was taken on a tape recorder.) If one claims that his property has been confiscated and taken without due process, that raises a constitutional question, and, if the

Court cannot understand what is involved without the taking of additional testimony, it will be permitted.

Anything further?

MR. CAMPBELL: If the Court please, may I request a little bit more information about the last portion of your conclusions? As I understand Mr. Bratton's argument, it is his present position that the very essence of this matter, as they view it, is that the formula set up by the Commission results in the respondents losing their property to someone else, their property rights, and this a deprivation of their property without due process of law.

THE COURT: I think that is all you are complaining about, isn't it, Mr. Bratton?

MR. BRATTON: First and foremost, that's our complaint.

MR. CAMPBELL: What I'm inquiring is this: Is it the Court's conclusion that, if he can be convinced from the transcript of the testimony already available to the Commission that the Commission had evidence -- that, if there is evidence in there that would enable the Court to make a determination independently, that he will not hear evidence? As I view it personally, we could conceivably start from scratch on that position, and I'd like to be clear as to what is meant.

THE COURT: That's a matter of the mechanics of it. I am no one to do any more work than my position compels me to do. I

would first expect counsel to advise me what evidence he wishes to present. Then I would read the transcript, and, if I concluded that I was sufficiently informed by the transcript, I would refuse to hear more testimony. But if it appeared to me that the transcript is deficient in facts which were to help me to a determination, which means in effect that I conclude that the Commission should have heard additional testimony, should have called for additional testimony -- but certainly I intend to permit no new testimony which is merely cumulative or argumentative, or, which by reasonable intelligence and reasonable presumption can afford the Court an opportunity to decide the issue without taking additional testimony --

MR. BRATTON: If the Court please, within that framework I believe there is one basic proposition that we will present to the Court in our request to permit additional testimony, that the order of which we are complaining is in effect now. The Oil Conservation Commission put it into effect July the 1st.

THE COURT: Of this year?

MR. BRATTON: Of this year, yes, sir. That means that wells which previously produced and were permitted to produce ten million cubic feet of gas, are now being permitted to produce two million, and vice versa. We know now what is

actually going on under the order. At the time this matter was presented and argued before the Commission, of course, there was conjecture as to just exactly what the allowable might mean and what might go on, but now we know. We have that information and we can now come before the Court and show to the Commission exactly what is going on in the field and where we think that gas is being taken from us and given to somebody else. Now that is one of our basic questions which we will propose to present.

THE COURT: That is one of the things I meant by a change in condition. I would suggest that you supply opposing counsel with your geological data or engineering data as to those factors.

MR. WARD: Your Honor, I don't believe we have here a constitutional question separate and distinct from the basic question before the Court which is whether it was reasonable in the sight of the various parties. I thought I ought to mention that. I don't think it is a separate and distinct problem.

THE COURT: In regard to the Phillips matter. I still regard it entirely possible that the Court might hold that any act which purports to give to the Oil Conservation Commission such broad powers as they apparently were given in this Act is unconstitutional. I have intimated this much before but I'm not deciding that.

Mr. Bratton, as soon as possible, you will supply opposing counsel with what you deem to be the results of putting their order into effect. It is entirely possible that on receipt of that information, the Oil Conservation Commission might ask that this order be remanded for rehearing by them. I'm sure that if the Oil Conservation Commission is convinced that the practical application of their order resulted in something they did not intend and in something which should not be persisted in, that it would make an order more nearly to what it thinks should be done.

MR. CAMPBELL: If the Court please, in that regard I might mention that I know nothing that prohibits anybody at any time from appearing before the Oil Conservation Commission and filing an application for a change in order as far as that's concerned, rather than before this Court.

THE COURT: Probably so but I don't suppose it would be proper to do so if it was in here. They wouldn't want this Court to take jurisdiction of a matter at the same time they were asking the Oil Conservation Commission to change their order on the same proposition. I assume Mr. Bratton knows that if he disagrees with the position of the appellant here that he can dismiss and start over with the Oil Conservation Commission.

MR. BRATTON: That is one of the legal questions that we are going to present to the Court at a later date, the question

of collateral attack upon the order of the Conservation Commission by appealing to the Commission in a separate action to change an order in a previous action.

THE COURT: Anything further?

MR. CAMPBELL: If the Court please, we have an answer but perhaps we can dispose of that if we are going to have a second pre-trial. I don't know that they are very essential at this time. I think we have enough information that we can proceed to the second conference and proceed with these matters defining the issues, the legal issues, in that second conference if the Court would rather have it that way.

THE COURT: That would suit me.

(Counsel agree to have second pre-trial conference in the month of September on date to be stipulated on.)

THE COURT: The transcript will serve as the pre-trial order.

** *** **

AND, THEREAFTER, to-wit: On the 15th day of September 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

PETITIONERS' OFFER OF PROOF

Pursuant to the pre-trial Order of the Court issued after the pre-trial conference in the above case held on August 4, 1958, the Petitioners set forth below the names of the witnesses which they propose to use in the above matter, the nature of their testimony, and the reason such testimony is offered.

1. Petitioners propose to offer testimony and evidence by Mr. Robert M. Leibrock, Consulting Petroleum Engineer, Midland, Texas.

At the time of the hearing before the Oil Conservation Commission the opinions of all experts were based upon then available information. A great portion of said information was not of recent date, and the opinions were based upon the estimate of the various experts as to what allowables might be assigned to various wells if the proposed formula including a deliverability factor was put into effect. Since the date of the Commission's Order complained of in this cause, new deliverability tests have been taken on all the wells in the field and the Commission Order has been put into effect as of July 1, 1958, and allowables have been assigned to the wells in the pool based upon said formula for each month since that date.

On the basis of the information now available, a study has been made by engineers from all of the Petitioner companies, which study has been supervised by Mr. Leibrock, and based upon this study Mr. Leibrock can now testify to the following:

(a) Petitioners deny that a pressure decline study can validly be utilized to determine the recoverable gas in place under a particular tract within the pool. However, even adopting this method of analysis, which method was utilized by the Respondent companies in their testimony before the Commission, a study of the field shows that there is more drainage under the deliverability formula than there would be under an acreage formula. This study will show that even utilizing the Respondent companies' method of analysis, deliverability does not result in a more equitable allocation but rather in a less equitable allocation than under the pre-existing formula.

(b) Utilizing the same method of analysis, it will be shown that the Petitioners will suffer over Four and One Half Million Dollars more drainage over the life of the field under the deliverability formula than they would under the pre-existing acreage formula.

(c) On the basis of a pore volume analysis of the entire field utilizing the results of the pressure tests made on all of the wells since the Commission Order was entered, it will be shown that there will be more total drainage throughout the field

and that the above listed Petitioners will suffer more drainage, substantially as will be shown under Paragraphs (a) and (b) above.

2. Petitioners have alleged that the orders of the Commission insofar as they purport to change the allocation formula to include a deliverability factor are so vague, indefinite and uncertain as to leave Petitioners without knowledge or information as to the meaning thereof.

In support of this contention, Petitioners propose to offer testimony and evidence by Mr. Leibrock for the purpose of showing that the term deliverability is meaningless unless defined as to how such deliverability is to be determined, and for the further purpose of showing that it is virtually impossible to obtain accurate deliverability tests under the conditions prescribed by the Commission.

In further support of this contention Petitioners propose to call Elvis Utz, Gas Engineer for the Oil Conservation Commission as an adverse witness to testify as to a meeting called without public notice or opportunity to be heard and conducted under his direction and supervision at Santa Fe, New Mexico, subsequent to adoption of the Order complained of as a result of which meeting the memorandum was issued by the Commission purporting to give meaning and effect to the Order complained of by defining the term "deliverability" and prescribing the conditions under which deliverability tests are to be taken.

3. Mr. Leibrock will testify that since the Commission Order was entered in this cause there have been two instances in which operating companies have shut in producing wells and by dedicating the acreage formerly assigned to those wells to high deliverability wells have been able to obtain a higher allowable for the same total amount of acreage than they would have been able to obtain by allowing all of the wells on the acreage to remain in a producing status. He will further show that there are other locations and areas in the pool in which the same result can be accomplished by shutting in producing wells, which will increase the deviation of the deliverability formula from the objective established by the statute. This evidence is now available due to the fact that deliverability tests have been taken on all the wells since the Commission Order was entered and the allowables under a deliverability formula are now available. Petitioners will offer this evidence in support of the allegations in their Petitions that the Commission finding that there is a general correlation between deliverabilities and recoverable gas in place under the tracts dedicated to the well is a conclusion which can be shown to be fallacious by actual occurrences in the field.

4. Petitioners will offer the testimony of Mr. Leibrock to explain the record made before the Commission, which is voluminous and in large measure very technical and complicated.

5. Petitioners will offer evidence as to the sources of

information and basis upon which any exhibits offered are prepared. However, the necessity for this testimony may be obviated by stipulation.

6. Petitioners will offer such other or further evidence as may appear advisable in rebuttal to any evidence or testimony offered by Respondents. The nature of this testimony and the witnesses who will offer such testimony or evidence cannot be determined until Respondents have offered evidence and the nature thereof is known.

Respectfully submitted,

ATWOOD & MALONE
Roswell, New Mexico

KELLAHIN & FOX
Santa Fe, New Mexico

HERVEY, DOW & HINKLE

By /s/ Howard C. Bratton

Attorneys for Petitioners

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 23rd day of September 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

STATEMENT OF THE CASE

This case involves the question of proration of gas production from the Jalmat Gas Pool, which lies generally in Townships 21 South, Range 35 East, through 23 South, 35 East; 21 South, 36 East through 26 South, 36 East; and 22 South, 37 East through 25 South, 37 East; in Lea County, New Mexico, and which pool produced generally from the Yates and Seven Rivers formations.

Proration of gas production is governed by the provisions of Sections 65-3-13 and 65-3-14, New Mexico Statutes, 1953, and rules adopted by the Oil Conservation Commission of New Mexico.

Gas prorationing was first instituted in the Jalmat Gas Pool and a number of other pools in southeastern New Mexico in 1954, after a series of hearings extending over approximately four years, during the course of which it was strongly urged by gas transmission companies that deliverability based on the ability of a well to produce be included in any proration formula. As a result of these hearings, the Oil Conservation Commission adopted without reference to deliverability a proration formula based solely upon the acreage allocated to the individual well.

Although the proration order required that wells be brought

into balance every six months, by restricting or shutting in those wells which had overproduced the amount of gas allocated to them and by the taking of production from those wells which had not produced their allowable, this provision of the proration order was suspended for a period of approximately four years, until December 31, 1957. By that date there were a number of wells which had produced in excess of the allowable assigned to them; other wells had not been produced to the extent of the allowable.

By application filed in the latter part of 1957, Texas Pacific Coal & Oil Company sought an order from the Commission "immediately terminating gas prorationing in the Jalmat Gas Pool, Lea County, New Mexico, or, in the alternative, for an order immediately cancelling all accumulated under production; requiring purchasers to increase nominations commensurate with actual takes; establishing deliverability as a factor in the proration formula; establishing maximum takes as to wells in the pool; and such other orders as will immediately bring the pool into balance and maintain such balance without waste and without abuse to correlative rights."

The application was heard as Commission Case No. 1327 on October 18, on November 14 and again on December 9, 1957.

Under date of January 29, 1958, the Commission entered its order No. R-1092-A denying the application of Texas Pacific Coal

& Oil Company in all respects except that the existing allocation formula based upon acreage alone was changed to a formula based upon 75% acreage times deliverability plus 25% acreage.

Following entry of this order, fourteen operators, including all of the companies filing appeal in this court, filed applications for rehearing on Order No. R-1092-A.

Rehearing was held on March 25, 1958. Under date of April 25, 1958, the Commission entered its order No. R-1092-C, reaffirming, and refusing to modify the provisions of Order No. R-1092-A.

On the basis of these two orders, petitions were filed in this court seeking review of the Commission's action under the provisions of Section 65-3-22, New Mexico Statutes, 1953, by: Continental Oil Company, Shell Oil Company, Cities Service Oil Company, Pan-American Petroleum Corporation, Humble Oil and Refining Company, Amerada Petroleum Corporation, Standard Oil Company of Texas, and The Atlantic Refining Company.

The Petitions For Review

As a result of the Commission's action in its Cause No. 1327, this Court now has before it eight cases attacking the Commission's orders on various grounds.

Separate petitions for review were filed by each of the eight companies. Basically, the matters raised in these petitions for review are the same; however, it should be noted that some of the Petitions raise questions and attack is made upon the

Commission's orders on legal grounds which do not appear in the petitions filed by other of the companies. For the purposes of this pre-trial conference we do not feel it necessary to point out to the Court where these differences exist, but will attempt to delineate the legal questions raised, regardless of whether they appear in one, or more of the petitions for review.

Since the petitions are fundamentally the same, except for minor differences, there is no logical argument against consolidating the cases for hearing in this Court, and they have been so consolidated.

Statutory Provisions For Review

Probably the first question to be resolved is raised by the provisions of the statute governing review by the court of actions taken by the Oil Conservation Commission.

Section 65-3-22, after first requiring that an application for rehearing be filed with the Commission, provides in subsection (b):

Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the Commission within twenty (20) days after the entry of the order following rehearing or after the refusal of rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission and shall set forth the order or decision of the commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed

on appeal shall be only questions presented to the commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be de novo, without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if such evidence was originally offered in the district court. The commission action complained of shall be prima facie valid and the burden shall be upon the part or parties seeking review to establish the invalidity of such action of the commission. The court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the court, which may include evidence in addition to the transcript of proceedings before the commission, and the law applicable thereto, enter its order either affirming, modifying, or vacating the order of the commission. In the event the court shall modify or vacate the order or decision of the commission, it shall enter such order in lieu thereof as it may determine to be proper. Appeals may be taken from the judgment or decision of the district court to the Supreme Court in the same manner as provided for appeals from any other final judgment entered by a district court in the State. The trial of such application for relief from action of the commission and the hearing of any appeal to the Supreme Court from the action of the district court shall be expedited to the fullest extent possible.

The provisions of this statute, in the light of decisions of the courts in other administrative law cases, immediately raise questions both as to the nature and scope of review to be accorded in the district court, and the relief that may be granted upon review. The petitions filed in the cases now before the Court raise the questions on both points. Petitioners are here seeking a trial de novo, with the right to introduce the record before the commission, and additional evidence. Petitioners further seek relief from the court by way of an order either vacating

Orders Nos. R-1092-A and R-1092-C, or the modification of said orders by the court.

Questions Raised In The Petitions

The petitions have alleged that the orders are unreasonable, unlawful, arbitrary and capricious, and are therefore invalid and void, on a number of grounds, which may be summarized briefly as follows:

1. That the application of Texas Pacific Coal & Oil Company, insofar as it sought inclusion of deliverability as a factor in the proration formula is concerned, constituted a collateral attack upon the previous proration order of the commission.
2. That absent a showing of a change of conditions, or that waste would occur, the Commission was without jurisdiction to change the previously-established proration formula.
3. That Texas Pacific Coal & Oil Company participated in the previous proration hearings, did not appeal therefrom, and was therefore estopped to request a change in the proration formula in a new proceeding in the absence of a showing that waste was occurring or would occur, or that there had been a change of conditions subsequent to the previous hearings.
4. That the finding of the Commission that there is a general correlation between the deliverability of gas wells in the pool and the recoverable gas in place under the tracts dedicated to the wells, upon which finding the orders complained of are based, is not supported by the evidence.

5. That even if such a correlation exists, it forms no basis authorized by law for modification of the pre-existing proration order.

6. That the decision of the Commission is not based upon any factor authorized by law for the determination of a proration formula, but is based upon factors not contemplated nor permitted by the statutes of New Mexico.

7. That the orders will result in waste and will violate correlative rights, contrary to law.

8. That the orders will result in underground waste, contrary to law.

9. That the orders will result in greater drainage across lease lines than would occur under the previously existing proration orders.

10. That vested property rights have accrued which will be disturbed and violated as a result of the Commission's orders, and there will result a taking of property without due process of law.

11. Correlative rights will be violated in that the orders permit production by offset operators of gas underlying lands of petitioners, without affording compensating counter-drainage, and will prevent petitioners from producing the recoverable gas in place underlying the tracts upon which the wells are located, contrary to law.

12. That the orders are vague, indefinite and uncertain and fail to advise petitioners of their rights thereunder.

13. That the commission erred in refusing to admit testimony as to property rights acquired under the pre-existing proration order.

14. That the formula for prorating allowable production which includes a deliverability factor is not a reasonable basis upon which to prorate and allocate the allowable production of gas from the pool, contrary to law.

15. That the proposed new formula must clearly protect correlative rights of operators, who have made large expenditures and made changes in contractual positions on the basis of the previous order.

16. That the orders are contrary to a preponderance of the evidence.

These assertions raise numerous legal questions, most of which would be summed up under argument on the Commission's application of the provisions of the New Mexico Statutes to the facts before it in this case. Such questions can be resolved only by reference to the record, which is not now before the Court, coupled with legal argument on the powers and duties of the Commission in prorating and allocating gas production under the provisions of the statutes.

Other Matters

In addition to the matters raised in the petitions for review, the prayer for relief raises additional questions which are authorized by the statute, in that petitioners ask the court to either vacate or modify the orders of the commission; that they be accorded a hearing de novo and the court determine the issues of fact and law on the matters presented; that the Court enter its order affirming Commission's Order No. R-520; and that the Court enter any proper orders modifying or in lieu of the orders complained of here.

The relief sought is authorized by Sec. 65-3-22 of the statutes. It will be necessary to determine what relief is proper and should be afforded petitioners in this case.

Conclusion

Under the applicable statutes, the Commission is authorized to prevent waste, and to protect correlative rights.

Petitioners contend here that there is no question of waste prevention before the Commission in this case when it considered a change in the proration formula. The sole question was one of reallocating the allowable gas production in the pool, resulting in the restriction of production from some wells over that enjoyed for many years, and increasing the production to be allowed to other wells, with no increase in the ultimate recovery from the

pool. The question is solely one of who is going to produce the gas from the pool.

ATWOOD & MALONE
Roswell, New Mexico

KELLAHIN & FOX
Santa Fe, New Mexico

HERVEY, DOW & HINKLE

By /s/ Jason W. Kellahin

Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 23rd day of September 1958, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

PETITIONERS' SUPPLEMENTAL OFFER OF PROOF

Supplementing Petitioners' Offer of Proof heretofore filed pursuant to the pre-trial order of the Court, and without in any way modifying said Petitioners' Offer of Proof, Petitioners further propose to use an additional witness as follows:

1. Petitioners propose to offer testimony and evidence by a qualified engineer of Continental Oil Company for the purpose of showing that it is impossible to determine the deliverability of gas wells with any degree of accuracy under the conditions prescribed by the Oil Conservation Commission, that the results of deliverability tests are frequently based upon arbitrary assumptions, and the results of such tests vary with the conditions under which the wells are tested.

This testimony and evidence is based upon tests made in the field under conditions prescribed by the Commission subsequent to the adoption of the orders complained of in the above captioned proceeding, the results of which tests have just become available to counsel.

The testimony and evidence is offered in support of Petitioners contention in this case that the order of the

Commission is vague, indefinite and uncertain; for the purpose of supporting Petitioners contention that the formula for prorating allowable production of gas which includes a deliverability factor is not a reasonable basis upon which to prorate and allocate the allowable production of gas from the Jalmat Gas Pool; and for the further purpose of supporting Petitioner's contention that inclusion of a deliverability factor in the proration formula will result in irreparable injury to the correlative rights of Petitioners and will prevent Petitioners from producing the recoverable gas in place underlying the tracts on which their wells are located.

Respectfully submitted,

ATWOOD & MALONE
Roswell, New Mexico

HERVEY, DOW & HINKLE
Roswell, New Mexico

KELLAHIN & FOX
Santa Fe, New Mexico

By /s/ Jason W. Kellahin

Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 12th day of June 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

M O T I O N

Come now the petitioners and move the Court for an order directing the respondent Oil Conservation Commission of New Mexico and the individual members thereof to forthwith prepare and certify to this Court the entire record of its proceedings, including the transcript of all testimony, all original exhibits, admitted or offered at the hearing before the Oil Conservation Commission of New Mexico, and all orders entered by the Commission pertaining to the case under Case No. 1327 on the docket of said Commission, all of which are necessary for use in reviewing the action of said Commission in this cause as provided by law.

KELLAHIN AND FOX

By /s/ Jason W. Kellahin
Attorneys for Petitioners

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 12th day of June 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follows, to-wit: an

O R D E R

This matter coming regularly before the Court upon the motion of petitioners for an order directing the respondent Oil Conservation Commission of New Mexico and its individual members to forthwith prepare and certify to this Court the entire record of its proceedings, including the transcript of all testimony, all original exhibits admitted or offered at the hearing before the Oil Conservation Commission, and all orders entered by the Commission pertaining to the case under Case No. 1327 on the docket of said Commission, and

The Court being fully advised in the premises and good cause appearing therefor,

It is, therefore, ORDERED that the respondent Oil Conservation Commission of New Mexico, and the individual members thereof, forthwith prepare and certify to this Court the entire record of its proceedings, including the transcript of all testimony, all original exhibits admitted or offered at the hearing before the Oil Conservation Commission of New Mexico, and all orders entered by the Commission pertaining to the case under Case No. 1327 on the docket of said Commission.

It is further ORDERED that a certified copy of this order be forthwith served on said Commission and the members thereof, or on their attorney.

/s/ John R. Brand
District Judge

AND, THEREAFTER, to-wit: On the 26th day of June 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

S T I P U L A T I O N

It is hereby stipulated and agreed by the parties hereto that JOHN BURROUGHS, Governor of the State of New Mexico, is successor in office to Edwin L. Mechem, and as such is a member of respondent OIL CONSERVATION COMMISSION OF NEW MEXICO, and that he be substituted for and named in these actions as successor to said Edwin L. Mechem for all purposes.

KELLAHIN AND FOX

By /s/ Jason W. Kellahin
Attorneys for Petitioners

/s/ Oliver E. Payne
OLIVER PAYNE, Attorney for Oil
Conservation Commission of New
Mexico

/s/ Robert W. Ward
ROBERT W. WARD, Attorney for
Permian Basin Pipeline Company

/s/ A. S. Grenier
Attorney for Southern Union Gas
Company

HARDIE, GRAMBLING, SIMS &
GALATZAN and RAY C. COWAN

CAMPBELL & RUSSELL

By /s/ Ray C. Cowan
Attorneys for El Paso
Natural Gas Company

By /s/ Jack M. Campbell
Attorneys for Respondent Texas
Pacific Coal & Oil Company

AND, THEREAFTER, to-wit: On the 26th day of June 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

RESPONDENTS' OFFER OF PROOF

Respondents make this offer of proof without prejudice to their contention, heretofore presented to the Court, that the Court may not lawfully receive or consider any testimony or other evidence in addition to the record made before the Oil Conservation Commission of New Mexico in Case No. 1327, and Respondents expressly reserve the right to object to all testimony or other evidence offered by Petitioners upon trial of this matter.

Subject to the foregoing, and pursuant to the requirement of the Court upon pre-trial conference, Respondents set forth herein the names of witnesses they propose to use and the general nature of their testimony. This offer of proof is subject to revision depending upon the nature of proof actually offered and received by the Court upon tender by Petitioners.

1. W. R. Keller, Consulting Petroleum Engineer, will testify in rebuttal to Robert M. Leibrock upon the matter of the use of a pressure decline study to determine recoverable gas in place and upon the equities involved in the gas proration formula adopted by the Commission as opposed to the "straight acreage" formula advocated by Petitioners.

2. Elvis Utz, Gas Engineer for the Oil Conservation Commission of New Mexico, will testify as to the complete history of gas prorationing Southeast New Mexico and the use of deliverability as a factor in the proration formula in the Jalmat Gas Pool. Mr. Utz will also testify as to the practical use of deliverability and testing procedures thereunder.

3. Randall Montgomery, Proration Manager for the Oil Conservation Commission, will testify as to the re-working of wells since the adoption of the present proration formula in the Jalmat Gas Pool and the effect of such work in regard to prevention of waste and protection of correlative rights.

4. Frank Martin, Texas-Pacific Coal and Oil Company, will present an analysis of allowable production in the Jalmat Gas Pool since the present formula became effective including an analysis of re-work operations and increased deliverability resulting therefrom, particularly with respect to Continental Oil Company, one of the Petitioners herein.

5. Norman Woodruff, El Paso Natural Gas Company, will present evidence to show that allocation of gas under the present formula provides a more equitable distribution of production than did the "straight acreage" formula.

Respondents will offer such other or further evidence as may appear advisable in rebuttal to any testimony or evidence offered by Petitioners. The nature of this testimony or evidence

cannot be determined until Petitioners have offered evidence and the nature thereof is known.

Respectfully submitted,

OIL CONSERVATION COMMISSION OF NEW MEXICO
Santa Fe, New Mexico

CAMPBELL AND RUSSELL
Roswell, New Mexico

COWAN AND LEACH
Hobbs, New Mexico

HARDIE, GRAMBLING, SIMS AND GALATZAN
El Paso, Texas

ROBERT W. WARD
Lovington, New Mexico

By /s/ Oliver E. Payne
Oliver E. Payne
Attorney for the
Oil Conservation Commission

AND, THEREAFTER, to-wit: On the 21st day of August 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Come now respondents and, pursuant to Rule 52(b), submit the following requested Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Court has jurisdiction of this cause of action and of the parties thereto.
2. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unreasonable, unlawful, arbitrary, or capricious.
3. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not vague, indefinite, or uncertain.
4. Petitioners had knowledge and information as to the meaning of Oil Conservation Commission Orders No. R-1092-A and R-1092-C, and the meaning of the term "deliverability" as used therein, and said Orders were understandable.
5. The proration formula based upon 100% acreage was established by Oil Conservation Commission Orders No. R-368-A and R-369-A and not by Order No. R-520.
6. Oil Conservation Commission Orders No. R-368-A and R-369-A contained findings as follows:

"(6) That pending further study and orders, the allocation of gas in the Jalco (Langmat) Gas Pool should be calculated on the basis of 100 per cent acreage

"(7) That an adequate gas well testing procedure should be adopted as soon as possible so that operators, purchasers and the Commission can determine the fairness and feasibility of an allocation factor for the pool which employs the factors of deliverability, pressure, or any other factor relating to gas well productivity."

7. There is a general co-relation between the deliverability of gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and the inclusion of a deliverability factor in the proration formula for the pool will therefore result in a more equitable allocation of the gas production in said pool than under a formula based upon 100% acreage.

8. The formula adopted by the Oil Conservation Commission in its Orders No. R-1092-A and R-1092-C allocates the allowable production among the gas wells in the Jalmat Gas Pool delivering to a gas transportation facility upon a reasonable basis, and recognizes correlative rights, and insofar as it is practicable, said Order prevents drainage between producing tracts in the said pool which is not equalized by counter-drainage.

9. In its final determination in this matter the Oil Conservation Commission did not consider any improper factors.

10. Oil Conservation Commission Orders No. R-1092-A and R-1092-C have not resulted and will not in the future result in

any economic waste.

11. Oil Conservation Commission Orders No. R-1092-A and R-1092-C have not caused and will not in the future cause underground waste.

12. The deliverability formula in the Order complained of encourages prudent operations and discourages imprudent operations and, thus, contributes to prevention of waste and the better utilization of gas in the Jalmat Gas Pool than did the 100% acreage formula.

Conclusions of Law

1. The application of Texas Pacific Coal and Oil Company in Case No. 1327 before the Oil Conservation Commission did not constitute a collateral attack upon any prior order of the Oil Conservation Commission.

2. Neither Orders No. R-368-A, R-369-A, or R-520 entered by the Oil Conservation Commission constituted a final determination that the allocation of the allowable production from the Jalmat Gas Pool should be made on a 100% acreage basis, and the Oil Conservation Commission had authority and jurisdiction to modify or change the proration formula established by its previous orders.

3. Neither Texas Pacific Coal and Oil Company nor the Oil Conservation Commission was estopped from requesting a change or making a change in the prorationing formula for the Jalmat Gas

Pool, and the Oil Conservation Commission had authority to revise, modify, or change its Orders No. R-368-A, R-369-A, or R-520.

4. The finding of the Oil Conservation Commission in its Order R-1092-C "that there is a general co-relation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells" is a proper finding, and provides a basis authorized by the Statutes of New Mexico for changing the proration formula for allocation of gas production from the Jalmat Gas Pool.

5. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unlawful, unreasonable, arbitrary, or capricious.

6. The Oil Conservation Commission in Case No. 1327 did not err by refusing to permit the introduction of testimony with reference to property rights allegedly acquired by petitioners while No. R-520 was in effect, nor did it err in refusing to permit petitioners to present testimony or proof of communitization of properties which had occurred while said Order was in effect.

7. Oil Conservation Commission Orders No. R-1092-A and R-1092-C protect correlative rights of owners of properties in the Jalmat Gas Pool and tend to prevent waste.

8. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not vague, indefinite or uncertain.

9. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not confiscatory; do not deprive petitioners of their

property without due process of law; and do not impair vested rights.

10. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unreasonable, unlawful, arbitrary or capricious.

11. Petitioners failed to sustain their burden of proving the allegations in their petition for review and therefore the petition should be dismissed and Orders No. R-1092-A and R-1092-C should be affirmed.

Respectfully submitted,

CAMPBELL & RUSSELL

By /s/ Jack M. Campbell
Jack M. Campbell

Attorneys for Respondent
Texas Pacific Coal and Oil Company
but submitted on behalf of all
Respondents

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 27th day of August 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

M O T I O N

Come now the Petitioners and move the court for an order enlarging the time in which to submit their requested findings of fact and conclusions of law, now due on August 26, 1959, granting them an additional ten days in which to file such requested findings of fact and conclusions of law, and in support thereof state:

1. That by reason of illness, and by reason of duties with the American Bar Association, two of the three resident counsel have not been available to participate fully in the preparation of such requested findings and conclusions.

2. That due to the large number of parties involved as Petitioners in these consolidated cases the time allowed has not been sufficient for consultation with non-resident counsel participating in said cases.

ATWOOD & MALONE
Roswell, New Mexico

KELLAHIN & FOX
Santa Fe, New Mexico

HERVEY, DOW & HINKLE
Roswell, New Mexico

By /s/ Clarence E. Hinkle
Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 25th day of August 1959 in open court, and on the 27th day of August 1959 there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: an

O R D E R

This matter coming regularly before the court upon the Motion of Petitioners for an order enlarging the time in which to submit requested findings of fact and conclusions of law now due on August 26, 1959, and

The court being fully advised and good cause appearing therefor,

IT IS, THEREFORE, ORDERED that the time for submitting requested findings of fact and conclusions of law be and the same hereby is extended to September 8, 1959.

/s/ Geo. T. Harris
District Judge

AND, THEREAFTER, to-wit: On the 28th day of August 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

CERTIFICATE

I hereby certify that a true copy of the Order entered herein by District Judge George T. Harris, extending the time for filing requested findings of fact and conclusions of law herein to September 8, 1959, was mailed to opposing counsel of record this 26th day of August, 1959.

KELLAHIN & FOX

By /s/ Jason W. Kellahin
Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 31st day of August 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

M O T I O N

Come now the petitioners and move the Court for an Order enlarging the time in which to submit their requested findings of fact and conclusions of law, now due on August 26, 1959, granting them an additional 20 days in which to file such requested findings of fact and conclusions of law, and in support thereof state:

1. That by reason of illness, and by reason of duties with the American Bar Association, two of the three resident New Mexico counsel have not been available to participate fully in the preparation of such requested findings and conclusions.

2. That due to the large number of parties involved as petitioners in these consolidated cases, the time allotted has not been sufficient for consultation with non-resident counsel participating in said cases.

KELLAHIN & FOX

By /s/ Jason W. Kellahin
Attorneys for Petitioners

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 31st day of August 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: an

O R D E R

This matter coming regularly before the Court upon the motion of petitioners for an order enlarging the time in which to submit requested findings of fact and conclusions of law, now due on August 26, 1959, and

The Court being fully advised and good cause appearing therefor,

It is, therefore, ORDERED that the time for submitting requested findings of fact and conclusions of law be and the same hereby is extended to September 26, 1959.

/s/ John R. Brand
District Judge

AND, THEREAFTER, to-wit: On the 3rd day of September 1959, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

CERTIFICATE

I hereby certify that a true copy of the Order entered herein by District Judge John R. Brand, extending the time for filing requested findings of fact and conclusions of law herein to September 26, 1959, was mailed to opposing counsel of record this 1st day of September, 1959.

KELLAHIN & FOX

By /s/ Jason W. Kellahin
Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 18th day of January 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF PETITIONERS CONTINENTAL OIL COMPANY, ET AL

COME NOW Petitioners in the above styled and numbered cause and respectfully request the Court to adopt the following:

Findings of Fact

1. The above styled and numbered cause is a consolidation of eight appeals from Orders No. R-1092-A and R-1092-C of the Oil Conservation Commission of New Mexico, entered respectively on January 29, 1958, and April 25, 1958. The Petitioners who individually appealed from the Orders and whose appeals were consolidated by order of the Court in this case are: Continental Oil Company, Amerada Petroleum Corporation, Pan-American Petroleum Corporation, Cities Service Oil Company, Shell Oil Company, The Atlantic Refining Company, Standard Oil Company of Texas, and Humble Oil and Refining Company. The Respondents in all appeals are the Oil Conservation Commission of New Mexico, composed of Edwin L. Mechem, member and chairman, Murray Morgan, member, and A. L. Porter, Jr., secretary; Texas Pacific Coal and Oil Company, a foreign corporation; El Paso Natural Gas Company, a foreign corporation; Permian Basin Pipeline Company, a foreign

corporation, and Southern Union Gas Company, a foreign corporation. By stipulation John Burroughs was substituted for Edwin L. Mechem as member and chairman of the Oil Conservation Commission and Respondent in the cases.

2. Each of the Petitioners is a foreign corporation duly admitted to do business in the State of New Mexico and is the owner of oil and gas properties and gas wells situated within the exterior boundaries of the Jalmat gas pool, located in Lea County, New Mexico.

3. The appeals consolidated in the above described and numbered cause were taken under the provisions of Section 65-3-22, New Mexico Statutes, 1953, Annotated. Timely application for rehearing on each of the Orders appealed from was made by the respective Petitioners before the Oil Conservation Commission of New Mexico, and all matters alleged as grounds for reversal by the several Petitioners in their respective Petitions for Review were raised in Applications for Rehearing filed with the New Mexico Oil Conservation Commission as required by statute. Timely appeals were taken by each of Petitioners from Orders No. R-1092-A and R-1092-C, and service of notice of said appeals as required by law was duly made upon Respondents.

4. The Jalmat gas pool in Lea County, New Mexico, lies generally in Townships 21 to 26 South, Ranges 35 to 37 East, and produces a gas principally from the Yates and Seven Rivers formations. Gas was originally discovered and development of the

pool began in about the year 1935. At the time of the filing of the Petition in the proceeding before the Oil Conservation Commission from which this appeal is taken, there were approximately 389.13 gas units within the Jalmat Gas Pool, each of which was producing natural gas through one or more gas wells.

5. The Oil Conservation Commission of New Mexico did not limit the production of natural gas from the wells located in what is now the Jalmat Gas Pool from the time of the original discovery of gas in said area until January 1, 1954. After extensive hearings held over a period of some three years, the Oil Conservation Commission, by order effective January 1, 1954, inaugurated prorationing in what is now the Jalmat Gas Pool. On August 12, 1954, following further hearings, the Commission issued its Order No. R-520 in Case No. 673 which created the Jalmat Gas Pool and provided the method for allocating gas allowable as between the wells in said pool. Said Order provided for the allocation of all allowable production between natural gas wells solely on the basis of the acreage attributed to each well. This was the basis on which all natural gas allowables have been allocated as between the wells in the natural gas pools of southeastern New Mexico, and likewise the basis on which all oil allowables have been and are allocated as between oil wells in the State of New Mexico. The production of natural gas from the Jalmat pool as provided in Order No. R-520 continued to be

allocated on a 100% acreage basis until the entry by the Commission of Order No. R-1092-A, from which this appeal is taken.

6. Case No. 1327 before the Oil Conservation Commission, in which Orders No. R-1092-A and R-1092-C were entered, was initiated by the application of Respondent Texas Pacific Coal and Oil Company praying, in the alternative:

(1) an Order immediately terminating gas prorationing in the Jalmat Gas Pool, or

(2) an Order immediately cancelling all accumulated under-production and redistributing such under-production to over-produced wells in the Jalmat Gas Pool; requiring gas purchasers to make adequate nominations; and,

(3) establishing deliverability of gas wells as a factor in the proration formula for the pool; and establishing a maximum amount of gas which may be taken from any well in the pool during any specified period of time.

7. After hearings, the Oil Conservation Commission, on January 29, 1958, entered Order No. R-1092-A, including deliverability as a factor in the proration formula for the Jalmat Gas Pool. The Commission thereby terminated the allocation of allowable in the Jalmat pool on the 100% acreage basis which had existed since the inauguration of proration on January 1, 1954, and substituted a formula of 25% acreage plus 75% acreage times deliverability, thereby making deliverability a major factor in the allocation of gas allowable. Other relief prayed in Case No. 1327 was denied.

8. Petitioners applied for rehearing, and after rehearing the Commission entered its Order No. R-1092-C directing that Order No. R-1092-A remain in full force and effect.

9. During the course of pre-trial conferences on August 4, 1958, and September 23, 1958, it was stated by counsel for one or more of the parties, without dissent from counsel for any of the parties, that the issues presented by the Orders appealed from in this case involved only questions of correlative rights as affected by the change in the allocation formula and that there was no question of waste of any character involved in the case. On the basis that there was no public interest involved, the Court made its trial ruling that the Oil Conservation Commission was not properly an adversary party, at which time counsel for the Commission denied it had agreed that no question of waste was involved.

10. Order No. R-1092-A, as reaffirmed by Order No. R-1092-C, is based upon a finding by the Commission that "Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells." Said finding is not supported by substantial evidence in the record before the Commission in that;

(a) No evidence whatever was presented by Respondents

in the hearing before the Oil Conservation Commission as to the recoverable gas in place under the tracts dedicated to the wells in the Jalmat Gas Pool. The existence or nonexistence of a correlation between deliverabilities of gas wells and "the recoverable gas in place under the tracts dedicated to said wells" could not be determined in the absence of such evidence, and hence no substantial evidence supports said finding.

(b) All testimony presented by Respondents was as to the "reserves" of the gas wells in the Jalmat pool, as distinguished from the recoverable gas in place under the tracts assigned to said wells. All such "reserves" were determined by the extrapolation of a pressure production decline curve based entirely upon the past production history of the well. To attribute unproduced reserves to a well based upon the extrapolation of such a curve assume that all drainage from surrounding tracts which has occurred during the history of the well in question will continue throughout its lifetime. It thereby attributes to a draining well (usually a high deliverability well), and hence to the tract on which it is situated, recoverable gas in place which underlies tracts dedicated to other wells in the pool.

(c) The recoverable gas in place under a tract bears no fixed relationship to the amount of gas which a well on the tract could produce inasmuch as many gas wells have the capacity to drain much larger tracts than the acreage actually dedicated to the well. This condition exists with reference to many wells in the Jalmat Gas Pool.

(d) The only evidence offered before the Commission or before this Court as to the recoverable gas in place under the tracts assigned to the wells in the Jalmat pool was offered by Petitioners and showed a total absence of correlation between the deliverabilities of wells in said pool and the recoverable gas in place under the tracts dedicated to said wells.

11. Order No. R-1092-A purports to allocate 75% of the gas production from the Jalmat Gas Pool on the basis of the acreage dedicated to a well multiplied by the calculated deliverability of said well. Calculated deliverability is defined in the Order as the result of deliverability tests to be taken "in a manner and at such time as the Commission may prescribe" and is not otherwise defined in the Order.

12. The term "deliverability" as used in the oil and gas industry means the ability of a well to produce under specified conditions, and until such conditions are specified, the term is meaningless for purposes of practical application.

13. By informal memorandum issued without notice and hearing under date of February 24, 1958, the Commission undertook to define deliverability and to prescribe the conditions under which deliverability tests would be taken in the Jalmat Gas Pool and the manner of calculating the results of such tests.

14. The calculated deliverabilities resulting from successive tests of wells in the Jalmat Gas Pool, taken in the

manner prescribed by the memorandum of February 24, 1958, have varied to such an extent that the deliverability factor in the proration formula has proved to be an erratic, unpredictable and constantly fluctuating factor, and has no relation whatever to the recoverable gas in place under the tracts assigned to the respective wells. The inclusion of such calculated deliverabilities in the formula for the allocation of allowable therefore results in including a factor which has no relationship to recoverable gas in place.

15. In individual cases, the calculated deliverability of wells in the Jalmat pool, as computed on the basis of successive official annual tests made in accordance with the requirements of the Oil Conservation Commission, has fluctuated up to extremes of more than 2,000%. For all of the wells in the pool as a whole, there resulted an average change in calculated deliverability between 1958 and 1959 of 40.32%. This change could have no relationship to any change in recoverable gas in place under the tracts assigned to the wells tested.

16. Fluctuations in calculated deliverability revealed by successive tests of wells in the Jalmat pool conform to no pattern whatever. The evidence did not establish that fluctuation was related directly to prudent operation, manner of completion or any other facts. Each of such factors may affect the calculated deliverability of a particular well, but they have no

uniform or predictable effect upon any well.

17. The evidence discloses that as a result of the modification in the proration formula provided for by Order R-1092-A, eight operators in the Jalmat pool experienced a total reduction in monthly income from the sale of natural gas produced from said pool of approximately \$40,000.00. Four other operators at the same time experienced an increase in monthly revenue from the sale of gas produced from said pool of approximately \$50,000.00. The redistribution of allowable production which resulted in these changes in income from the sale of gas conformed generally to the evidence presented before the Commission by Petitioners as to the anticipated effect of the inclusion of deliverability in the proration formula. There was no evidence before the Commission or before the Court from which it could be concluded that such redistribution resulted in the elimination of any pre-existing abuse of correlative rights under the acreage formula.

18. The evidence discloses that application of the proration formula promulgated by Order R-1092-A, results in a net increase in drainage between tracts in said pool under said Order as compared to the uncompensated drainage which occurred under the pre-existing Order allocating allowables on the basis of acreage alone.

19. Order R-1092-A, as reaffirmed by Order R-1092-C, results in injury to the correlative rights of the operators in the

Jalmat Gas Pool which does not occur under the pre-existing 100% acreage allocation formula.

20. The evidence discloses no change in the condition of the Jalmat Gas Pool itself subsequent to January 1, 1954, on which date proration of gas was begun under a 100% acreage formula, which could be made the basis of reconsideration by the Commission of the proration formula in said pool, as was done in Case No. 1327.

21. Respondent Texas Pacific Coal and Oil Company was the only producer of natural gas in the Jalmat Gas Pool which supported before the Commission the inclusion of a deliverability factor in the proration formula for said pool. The remaining Respondents, other than the Commission, are natural gas pipeline companies which, if producing gas in said pool at all, do so incidentally to the operation of their pipelines.

Conclusions of Law

1. The Court has jurisdiction of this review action and of the parties thereto.

2. Under the statutes of New Mexico, the Oil Conservation Commission, in the allocation of natural gas allowables, is required to afford to the owner of each property in the pool an opportunity to produce his just and equitable share of the gas in the pool. That share is defined as the amount that can be

practically obtained without waste substantially in the proportion that the quantity of the recoverable gas under such property bears to the total recoverable gas in the pool. The use of any other standard for determining the rights of the owners in a pool than that prescribed by the statute as above stated is contrary to the statute and in excess of the jurisdiction of the Commission. The substitution of "reserves" for recoverable gas in place made by the Commission in the promulgation of Order R-1092-A is in excess of the jurisdiction of the Commission, and Order R-1092-A is, therefore, invalid and void.

3. Orders R-1092-A and R-1092-C of the New Mexico Oil Conservation Commission are not supported by substantial evidence presented before the Commission in Case No. 1327 and are, therefore, arbitrary and capricious and invalid and void.

4. In the absence of waste, which is not involved in this case, proration of natural gas in the Jalmat Gas Pool, having been inaugurated by the Commission on the basis of 100% acreage formula, could only be changed by the Commission if the formula proposed would result in greater protection of the correlative rights of the owners in said pool as said rights are defined by the statutes of New Mexico.

5. The finding of the Commission that the inclusion of a deliverability factor in the proration formula for the Jalmat pool would result in a "more equitable allocation of the gas production in said pool than under the present gas proration formula"

is not the equivalent of a finding that such action would result in affording to the owner of each property in the pool a better opportunity to produce without waste his just and equitable share of the gas in said pool, so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable gas under such property bears to the total recoverable gas in the pool, which is the standard fixed by the Legislature.

6. Having failed to find the facts required by the statute for the exercise of this power, the Commission is without jurisdiction to enter an Order terminating proration under the former acreage formula and substituting the formula provided by Order R-1092-A.

7. There is no general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells. The inclusion of the deliverability factor in the proration formula for said pool will result in increased drainage in said pool not offset by compensating counter drainage. Orders R-1092-A and R-1092-C are, therefore, arbitrary, capricious and void.

8. The issue of waste is not involved in this case.

9. In the absence of an issue of waste, and the absence of any showing before the Commission of a change of condition upon which such action might be predicated, the Commission was without

authority or jurisdiction to modify the proration formula in the Jalmat Gas Pool, which was promulgated by Order R-520.

10. The loss of income sustained by Petitioners and other operators in the Jalmat Gas Pool as a result of Order R-1092-A, as reaffirmed by Order R-1092-C, constitutes a taking of their property without due process of law, contrary to the provisions of the Constitution of the State of New Mexico, the United States of America, and said Order is, therefore, void.

11. Order No. R-1092-A, as reaffirmed by Order R-1092-C, is so vague and indefinite as to be invalid and void for the reason that it fails to provide for the manner in which the calculated deliverability of wells will be determined, and, hence, it is impossible for the owners of wells in said pool to determine from said Order its impact upon them and their property.

12. In the alternative, and only in the event that the Court shall refuse the proceeding requested conclusion, Order R-1092-A, as reaffirmed by Order R-1092-C, is so vague, indefinite and uncertain as to be invalid and void in that the fluctuation of calculated deliverabilities of wells in the Jalmat Gas Pool which has actually occurred under said Order and the subsequent memorandum issued by the Commission can have no possible relation to fluctuations in the recoverable gas in place. This results in a redistribution of the ownership of the gas in place in the Jalmat Gas Pool on an illegal arbitrary and capricious basis and without due process of law in violation of State and Federal Constitutions.

13. Order R-1092-A is invalid and void for the reason that it does not constitute a reasonable basis for the proration of production of natural gas in the Jalmat Gas Pool inasmuch as it gives major effect to a factor which is completely erratic and unpredictable and which factor has no relation to the recoverable gas in place due to its susceptibility to influence from factors other than recoverable gas in place.

14. Under the Statutes of New Mexico the Commission must allocate allowable production "upon a reasonable basis and recognizing correlative rights". Any allocation formula adopted, therefore, must result in affording, so far as it is practical to do so, to the owner of each property in the pool the opportunity to produce, without waste, his just and equitable share of the gas in the pool. This is defined as an amount so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable gas under such property bears to the total recoverable gas in the pool. An acreage proration formula for the Jalmat pool having been established originally, a finding that a proposed modification of the formula would result in affording a greater opportunity to produce his just and equitable share of the gas in the pool, as defined by the statute, is an essential prerequisite of any change in the formula. No such finding was made and no evidence was presented in this case which

would support such a finding inasmuch as no evidence was offered by Respondents as to the recoverable gas in place under the tracts of the respective owners. There was, therefore, no evidence as to the effect of the proposed formula upon the right of each owner in the pool to produce the amount of gas, which the statute defines as his correlative right in the pool, and no evidence which would support a change in the formula.

15. Judgment should be entered declaring Orders R-1092-A and R-1092-C to be void, and vacating and setting them aside.

Respectfully submitted,

HERVEY, DOW & HINKLE

KELLAHIN & FOX

ATWOOD & MALONE

By: /s/ Ross L. Malone
Attorneys for Petitioners

AND, THEREAFTER, to-wit: On the 17th day of February 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

DECISION OF THE COURT

The Court makes the following

Findings of Fact

1. The Court has jurisdiction of this cause of action and of the parties thereto.
2. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unreasonable, unlawful, arbitrary, or capricious.
3. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not vague, indefinite, or uncertain.
4. Petitioners had knowledge and information as to the meaning of Oil Conservation Commission Orders No. R-1092-A and R-1092-C, and the meaning of the term "deliverability" as used therein, and said Orders were understandable.
5. The proration formula based upon 100% acreage was established by Oil Conservation Commission Orders No. R-368-A and R-369-A and not by Order No. R-520.
6. Oil Conservation Commission Orders No. R-368-A and R-369-A contained findings as follows:

"(6) That pending further study and orders, the allocation of gas in the Jalco (Langmat) Gas Pool should be calculated on the basis of 100 per cent acreage

"(7) That an adequate gas well testing procedure should be adopted as soon as possible so that operators, purchasers and the Commission can determine the fairness and feasibility of an allocation factor for the pool which employs the factors of deliverability, pressure, or any other factor relating to gas well productivity."

7. There is a general co-relation between the deliverability of gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and the inclusion of a deliverability factor in the proration formula for the pool will therefore result in a more equitable allocation of the gas production in said pool than under a formula based upon 100% acreage.

8. The formula adopted by the Oil Conservation Commission in its Orders No. R-1092-A and R-1092-C allocates the allowable production among the gas wells in the Jalmat Gas Pool delivering to a gas transportation facility upon a reasonable basis, and recognizes correlative rights, and insofar as it is practicable, said Order prevents drainage between producing tracts in the said pool which is not equalized by counter-drainage.

9. In its final determination in this matter the Oil Conservation Commission did not consider any improper factors.

10. Oil Conservation Commission Orders No. R-1092-A and R-1092-C have not resulted and will not in the future result in

any economic waste.

11. Oil Conservation Commission Orders No. R1092-A and R-1092-C have not caused and will not in the future cause underground waste.

12. The deliverability formula in the Order complained of encourages prudent operations and discourages imprudent operations and, thus, contributes to prevention of waste and the better utilization of gas in the Jalmat Gas Pool than did the 100% acreage formula.

The Court adopts the following

Conclusions of Law

1. The application of Texas Pacific Coal and Oil Company in Case No. 1327 before the Oil Conservation Commission did not constitute a collateral attack upon any prior order of the Oil Conservation Commission.

2. Neither Orders No. R-368-A, R-369-A, or R-520 entered by the Oil Conservation Commission constituted a final determination that the allocation of the allowable production from the Jalmat Gas Pool should be made on a 100% acreage basis, and the Oil Conservation Commission had authority and jurisdiction to modify or change the proration formula established by its previous orders.

3. Neither the Texas Pacific Coal and Oil Company nor the Oil Conservation Commission was estopped from requesting a

change or making a change in the prorationing formula for the Jalmat Gas Pool, and the Oil Conservation Commission had authority to revise, modify, or change its Orders No. R-368-A, R-369-A, or R-520.

4. The finding of the Oil Conservation Commission in its Order R-1092-C "that there is a general co-relation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells" is a proper finding, and provides a basis authorized by the Statutes of New Mexico for changing the proration formula for allocation of gas production from the Jalmat Gas Pool.

5. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unlawful, unreasonable, arbitrary, or capricious.

6. The Oil Conservation Commission in Case No. 1327 did not err by refusing to permit the introduction of testimony with reference to property rights allegedly acquired by petitioners while No. R-520 was in effect, nor did it err in refusing to permit petitioners to present testimony or proof of communitization of properties which had occurred while said Order was in effect.

7. Oil Conservation Commission Orders No. R-1092-A and R-1092-C protect correlative rights of owners of properties in the Jalmat Gas Pool and tend to prevent waste.

8. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not vague, indefinite or uncertain.

9. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not confiscatory; do not deprive petitioners of their property without due process of law; and do not impair vested rights.

10. Oil Conservation Commission Orders No. R-1092-A and R-1092-C are not unreasonable, unlawful, arbitrary or capricious.

11. Petitioners failed to sustain their burden of proving the allegations in their petition for review and therefore the petition should be dismissed and Orders No. R-1092-A and R-1092-C should be affirmed.

All requested finds of fact and conclusions of law submitted by the parties at variance herewith are hereby refused.

DONE on this the 16th day of February, A. D. 1960.

/s/ John R. Brand
District Judge

AND, THEREAFTER, to-wit: On the 17th day of February 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

JUDGMENT

This cause having come on for trial before the Court on July 21, 1959, the parties having appeared by their respective Counsel, and the Court having considered the entire record of proceedings before the Oil Conservation Commission of New Mexico, including the transcript of all testimony, all original exhibits admitted or offered at the hearings before said Commission, and all orders entered by the Commission pertaining to Case No. 1327 on the docket of said Commission; and the Court having heard additional testimony and considered additional exhibits admitted in evidence by this Court upon trial of this Cause and having heard argument of Counsel; and the Court having filed its Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that each of the Petitions for Review filed by Petitioners herein be and the same is hereby dismissed, and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that Orders No. R-1092-A and R-1092-C of the Oil Conservation Commission of New Mexico be and they are each hereby in all respects fully affirmed.

/s/ John R. Brand
District Judge

Entered this Feb. 16, 1960

AND, THEREAFTER, to-wit: On the 14th day of March 1960,
there was filed in the office of said Clerk, in said Cause
No. 16,213, in words and figures as follow, to-wit: a

MOTION FOR ALLOWANCE OF APPEAL

Petitioner in the above cause, by its attorneys, being
aggrieved, move the Court to enter its order allowing an appeal
to the Supreme Court of New Mexico from the judgment entered
herein.

ATWOOD & MALONE
Roswell, New Mexico

By /s/ Ross L. Malone

HERVEY, DOW, & HINKLE
Roswell, New Mexico

By /s/ Howard C. Bratton

KELLAHIN & FOX
Santa Fe, New Mexico

By /s/ Jason W. Kellahin

Attorneys for Petitioner

AND, THEREAFTER, to-wit: On the 14th day of March 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

ORDER ALLOWING APPEAL

This matter coming regularly before the Court upon the motion of the petitioner, by its attorneys,

It is, therefore, ORDERED that the petitioner herein be, and it is hereby, granted an appeal to the Supreme Court of New Mexico from the judgment heretofore entered in this cause.

/s/ John R. Brand
District Judge

AND, THEREAFTER, to-wit: On the 14th day of March 1960,
there was filed in the office of said Clerk, in said Cause
No. 16,213, in words and figures as follow, to-wit:

NOTICE OF APPEAL

TO: Oliver E. Fayne
Oil Conservation Commission of New Mexico
Box 871
Santa Fe, New Mexico

Jack M. Campbell
Campbell & Russell
Box 721
Roswell, New Mexico

Ray C. Cowan
P. O. Box 1526
Hobbs, New Mexico

Robert W. Ward
201 N. Love
Lovington, New Mexico

Manuel Sanchez
Batts Building
Santa Fe, New Mexico

Notice is hereby given pursuant to applicable rule of the
Supreme Court of New Mexico that an order has been entered in
the District Court in this cause allowing an appeal in the above
entitled matter to said Supreme Court by the Petitioner herein.

KELLAHIN & FOX
Santa Fe, New Mexico

By /s/ Jason W. Kellahin

ATTORNEYS FOR PETITIONER

ATWOOD & MALONE
Roswell, New Mexico

By /s/ Ross L. Malone

HERVEY, DOW & HINKLE
Roswell, New Mexico

By /s/ Howard Bratton

AND, THEREAFTER, to-wit: On the 14th day of March 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

CERTIFICATE

The undersigned clerk and reporter of the above Court hereby respectively certify that satisfactory arrangements have been made by petitioner, above named, with the undersigned for payment of compensation to undersigned by virtue of the pending appeal in this cause.

/s/ W. M. Beauchamp
Clerk of the Court

/s/ Clarence V. Johnson
Court Reporter

AND, THEREAFTER, to-wit: On the 22nd day of March 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit:

PROOF OF SERVICE

The undersigned, one of the attorneys for Petitioner, Continental Oil Company, in the above styled and numbered cause hereby certifies that on the 21st day of March, 1960, he mailed a copy of the Notice of Appeal to the following named counsel for Respondents:

Oliver E. Payne
Oil Conservation Commission of New Mexico
Box 871
Santa Fe, New Mexico

Jack M. Campbell
Campbell & Russell
Box 721
Roswell, New Mexico

Ray C. Cowan
P. O. Box 1526
Hobbs, New Mexico

Robert W. Ward
201 North Love
Lovington, New Mexico

Manuel Sanchez
Batts Building
Santa Fe, New Mexico

HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

KELLAHIN & FOX
P. O. Box 1713
Santa Fe, New Mexico

ATWOOD & MALONE

By /s/ E. Kirk Newman
P. O. Box 867
Roswell, New Mexico

AND, THEREAFTER, to-wit: On the 25th day of March 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

MOTION FOR ALLOWANCE OF CROSS-APPEAL

Comes now Respondent Oil Conservation Commission of New Mexico in the above-captioned cause and moves the court for an order granting it a cross-appeal to the Supreme Court of New Mexico from the final judgment made and entered of record in said cause on the 17th day of February, 1960, for the reason that the Respondent Oil Conservation Commission of New Mexico was not permitted to actively participate in the trial of such cause and was thereby aggrieved.

OLIVER E. PAYNE
Special Assistant Attorney General
P. O. Box 871, Santa Fe, New Mexico
Attorney for Respondent
Oil Conservation Commission

s/ Oliver E. Payne

AND, THEREAFTER, to-wit: On the 25th day of March 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: an

ORDER GRANTING CROSS-APPEAL

Upon motion of the Respondent Oil Conservation Commission of New Mexico for an order allowing it a cross-appeal to the Supreme Court of the State of New Mexico from the final judgment made and entered of record in the above-styled and numbered cause on February 17, 1960,

IT IS ORDERED that the Respondent Oil Conservation Commission of New Mexico be, and it is hereby, granted a cross-appeal to the Supreme Court of New Mexico from said final judgment.

Dated this 25 day of March, 1960.

/s/ John R. Brand
District Judge
Fifth Judicial District

AND, THEREAFTER, to-wit: On the 28th day of March, 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, in words and figures as follow, to-wit: a

NOTICE OF ALLOWANCE OF CROSS-APPEAL

TO:

Jason Kellahin
Kellahin & Fox
Attorneys at Law
Santa Fe, New Mexico

Ross L. Malone
Atwood & Malone
Attorneys at Law
Roswell, New Mexico

Howard Bratton
Hervey, Dow & Hinkle
Attorneys at Law
Roswell, New Mexico

You are hereby notified and advised that a Motion for Allowance of Cross-Appeal from the final judgment made and entered in the above-styled and numbered cause on the 17th day of February, 1960, was filed on the 25th day of March, 1960, and on said date an order granting a cross-appeal to Respondent Oil Conservation Commission of New Mexico was made and filed.

Enclosed with this Notice of Allowance of Cross-appeal is a copy of the Motion for Allowance of Cross-appeal and a copy of the Order Granting the Cross-Appeal.

OLIVER E. PAYNE
Special Assistant Attorney General
P. O. Box 871, Santa Fe, New Mexico
Attorney for Respondent
OIL CONSERVATION COMMISSION

S/ Oliver E. Payne

I hereby certify that on the 25th day of March, 1960, I mailed a true copy of the Notice of Allowance of Cross-Appeal to resident opposing counsel of record. Enclosed therewith was a copy of the Motion for Allowance of Cross-Appeal and the Order Granting the Cross-Appeal.

s/ Oliver E. Payne
Special Assistant Attorney General
Attorney for Respondent Oil
Conservation Commission
P. O. Box 871, Santa Fe, New Mexico

AND, THEREAFTER, to-wit: On the 12th day of April 1960, there was filed in the office of said Clerk, in said Cause No. 16,213 (and in Causes No. 16,214, 16,215, 16,217, 16,218, 16,219 and 16,220), in words and figures as follow, to-wit: a

STIPULATION

Whereas, petitioners have heretofore filed their motion for appeal and the Court having entered its order allowing an appeal to the Supreme Court of New Mexico from the judgment entered in each of the above captioned causes, and

Whereas, said causes were consolidated for trial in the District Court under style and designation of "Continental Oil Company, et al., Petitioners, vs. Oil Conservation Commission of New Mexico, et al., Respondents, No. 16213 through No. 16220, inclusive; consolidated under No. 16213," heard on a common record, and a consolidated judgment entered therein, and

Whereas said causes present identical questions for review in the Supreme Court,

Now, therefore, the undersigned attorneys of record for the respective parties hereto, hereby stipulate and agree that said appeals may be consolidated for all purposes, and that said appeals by petitioners may be heard and determined upon a single transcript and record, and;

It is further stipulated and agreed that the original

transcript only of the hearing before the Oil Conservation Commission of New Mexico, with exhibits and attachments thereto, in the application of Texas Pacific Coal and Oil Company for an order amending the pool rules of the Jalmat Gas Pool, Lea County, New Mexico, heard as Case No. 1327 on the docket of said Commission, which transcript of proceedings was received in evidence as an exhibit in the District Court in and for the County of Lea, State of New Mexico, Dockets Nos. 16213 through 16220, inclusive, consolidated under No. 16213, shall be considered by the Court as if the same had been included in the transcript, bill of exceptions and record, as prepared and certified by the Clerk of the Court, relating to the appeal herein now pending, and

It is further stipulated and agreed that original exhibits offered and received in evidence at the trial of causes Nos. 16213 through 16220, inclusive, consolidated under Cause No. 16213, in the District Court, are of such character they cannot be transferred into the record and that the originals only of said exhibits shall be sent, with the proper certificate attached, to the Supreme Court of New Mexico, and that the same be considered a part of the transcript, bill of exceptions and record as prepared and certified by the clerk of the court, relating to the appeal herein now pending.

ATWOOD & MALONE
 HERVEY, DOW & HINKLE
 KELLAHIN & FOX

By /s/ Jason W. Kellahin
 Attorneys for Petitioners

/s/ Oliver E. Payne
 OLIVER E. PAYNE, Attorney for
 Respondent Oil Conservation
 Commission of New Mexico

/s/ Manuel A. Sanchez
 MANUEL A. SANCHEZ, Attorney for
 Respondent Southern Union Gas Company

CAMPBELL & RUSSELL

By /s/ Jack M. Campbell
 Attorneys for Respondent
 Texas Pacific Coal & Oil Company

COWAN & LEACH

By /s/ Ray C. Cowan
 Attorneys for Respondent
 El Paso Natural Gas Company

/s/ Robert W. Ward
 ROBERT W. WARD, Attorney for
 Respondent Permian Basin Pipeline
 Company

AND, THEREAFTER, to-wit: On the 12th day of April 1960, there was filed in the office of said Clerk, in said Cause No. 16,213, (and in Causes Nos. 16,214, 16,215, 16,217, 16,218, 16,219 and 16,220), in words and figures as follow, to-wit: an

O R D E R

This matter coming on regularly to be heard on the stipulation of counsel for consolidation of the appeals and preparation of the record herein, and the Court being fully advised, and good cause appearing therefor.

NOW, THEREFORE, it is ORDERED that Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219, 16220 on the docket of this Court be, and the same hereby are consolidated for all purposes, and

Permission is hereby granted to prepare and submit a single transcript and record in said consolidated cause and,

Permission is further granted to submit the original transcript only of the hearing before the Oil Conservation Commission of New Mexico, with exhibits and attachments thereto, in the Application of Texas Pacific Coal & Oil Company for an order amending the pool rules of the Jalmat Gas Pool, Lea County, New Mexico, heard as Case No. 1327 on the docket of said Commission, which transcript of proceedings was received in evidence as an exhibit in this Court, Docket Nos. 16213 through 16220, inclusive, consolidated under No. 16213, and the same shall be considered as

if the same had been included in the transcript, bill of exceptions and record as prepared and certified by the Clerk of the court, relating to the appeals pending herein, and

Permission is further granted that the original exhibits offered and received in evidence at the trial of Causes Nos. 16213 through 16220, inclusive, consolidated under Docket No. 16213 in the District Court shall be certified in the original only, and that the same be considered a part of the transcript, bill of exceptions and record as prepared and certified by the clerk of the court relating to the appeals herein now pending.

/s/ John R. Brand
District Judge

AND, THEREAFTER, to-wit: On the 12th day of April 1960, there was filed in the office of said Clerk, in said Cause No. 16,213 (and in Causes No. 16214, 16215, 16217, 16218, 16219, 16220), in words and figures as follow, to-wit: a

P R A E C I P E

TO: Clerk of the District Court
Lea County
Lovington, New Mexico

Court Reporter
Lea County
District Court, Div. 3
Lovington, New Mexico

Please prepare, in triplicate except as hereinafter stated, for use in an appeal of this cause, the following:

1. Complete record proper, excepting only summons and subpoenas, and returns thereon in Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219, and 16220, and

2. Complete transcript of testimony and proceedings of the trial of the above causes Nos. 16213, 16214, 16215, 16217, 16218, 16219, and 16220, consolidated under No. 16213, together with all exhibits, objections by counsel, and rulings by the Court and letter from Court to Counsel dated July 27, 1959, and any proceedings which may hereafter occur in said causes to be included in the Bill of Exceptions.

3. Transcript of the hearing before the Oil Conservation

Commission of New Mexico, with exhibits, and attachments thereto, certified to the Court by the Oil Conservation Commission of New Mexico, and received in evidence, in the original only, however, pursuant to stipulation and order heretofore entered, to be included in the Bill of Exceptions.

The foregoing is deemed a complete record necessary for a review of the subject cause.

Respectfully submitted,

ATWOOD & MALONE
HERVEY, DOW & HINKLE
KELLAHIN & FOX

By /s/ Howard Bratton
Attorneys for Petitioners

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 21st day of April 1960, there was filed in the office of said Clerk, in said Cause No. 16,213 (consolidated for trial with Causes, 16,214, 16,2155, 16,217, 16218, 16,219 and 16,220), in words and figures as follow, to-wit:

POINT RELIED UPON BY CROSS-APPELLANT

Comes now Respondent Oil Conservation Commission of New Mexico in the above-styled and numbered causes and, in order to preclude the possibility of any waiver of rights under Rule 17 (2) of the Supreme Court Rules as related to Rule 12 (4) of the Supreme Court Rules, set forth the following point which is relied upon in its cross-appeal:

The trial court erred in ruling that the Oil Conservation Commission was not a proper adversary party and thus could not actively participate in the trial of this cause, inasmuch as the Oil Conservation Commission was the only party specifically representing the public interest.

Respectfully submitted,

OLIVER E. PAYNE
Special Assistant Attorney General
P. O. Box 871, Santa Fe, New Mexico
Attorney for Respondent
Oil Conservation Commission

s/ Oliver E. Payne

(Service of pleading
certified to.)

AND BE IT FURTHER REMEMBERED, That on the 13th day of May, 1958, there was filed in the office of the Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16214 on the Civil Docket of said Court, wherein AMERADA PETROLEUM CORPORATION, a Corporation, is Petitioner, and concerning the same Orders of The Oil Conservation Commission of the State of New Mexico referred to in District Court Cause No. 16213, in words and figures as follow, to-wit: a

PETITION FOR REVIEW OF ACTION
OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

Comes now Amerada Petroleum Corporation, hereinafter called petitioner, and petitions the Court for review of the action of the Oil Conservation Commission of the State of New Mexico in Case No. 1327 on the Commission's docket, and Orders No. R-1092-A and No. R-1092-C entered therein, and states:

1. Petitioner is a corporation organized and existing by authority of law and duly admitted to do business in the State of New Mexico, and is the owner and operator of natural gas wells and interests in gas wells situate within the exterior boundaries of the Jalmat Gas Pool, located in Lea County, New Mexico; respondent Oil Conservation Commission of New Mexico is a statutory body created and existing under the provisions of the laws of the State of New Mexico, composed of the members named in the

caption hereof, and vested with jurisdiction over all matters relating to the conservation of oil and gas in the State of New Mexico, the prevention of waste, and the enforcement of the Conservation Act of the State of New Mexico, being Chapter 65, Article 3, New Mexico Statutes Annotated, 1953 Compilation, as amended; Respondent Texas Pacific Coal & Oil Company is a foreign corporation admitted to do business in the State of New Mexico; respondent El Paso Natural Gas Company is a foreign corporation admitted to do business in the State of New Mexico; respondent Southern Union Gas Company is a foreign corporation admitted to do business in the State of New Mexico; respondent Permian Basin Pipeline Company is a foreign corporation admitted to do business in the State of New Mexico.

2. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327 on the docket of said Commission, changing the existing gas proration formula applicable to wells in the Jalmat Gas Pool, which existing formula had been promulgated by Order No. R-520 of the Oil Conservation Commission, entered in its Case No. 673 on August 12, 1954.

3. Petitioner was a party to Case No. 1327 and was affected by Order No. R-1092-A entered therein. Petitioner duly filed an application for rehearing directed to said Order No. R-1092-A, and after rehearing the Oil Conservation Commission, on the 25th

day of April, 1958, entered its Order No. R-1092-C, reaffirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the disposition of its application for rehearing and with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Case No. 1327 and Orders Nos. R-1092-A and R-1092-C entered therein by the Commission.

4. The nature of the proceeding before the Oil Conservation Commission of New Mexico is briefly as follows:

(a) The Jalmat Gas Pool is a pool defined and delineated by the Oil Conservation Commission, and is located in Lea County, New Mexico. The Commission, on August 12, 1954, after extended hearings, entered its Order No. R-520, which order instituted gas prorationing in the Jalmat Gas Pool, said Order No. R-520 having been entered in Case No. 673 on the Commission's docket. Said Order provided for allocation of the allowable gas production among the various wells in the pool on the basis of 100 per cent of the acreage dedicated to each individual well. All owners and operators and person interested were afforded an opportunity to be heard in Case 673. No appeal was taken from Order No. R-520, which order became effective January 1, 1955, and remained in full force and effect until the action of the Commission complained of herein. A copy of said Order No. R-520 marked as Exhibit A, is filed with the Clerk of the District Court of Lea County simultaneously with the filing of this petition for review

and by reference is incorporated herein. Copies of said Order are in the possession of, or available to, all parties to this proceeding.

(b) In the year 1957 Texas Pacific Coal & Oil Company filed its application with the Commission seeking an order immediately terminating gas prorationing in the Jalmat Gas Pool, or in the alternative, for an order cancelling all accumulated underproduction with redistribution of allowables, and establishment of a new proration formula containing deliverability as a factor. A copy of said application is attached hereto, marked Exhibit B, and made a part hereof.

(c) The application of Texas Pacific Coal & Oil Company was heard as Commission Case No. 1327. After hearings were held, the Commission, on January 29, 1958, entered its Order No. R-1092-A, a copy of which is attached hereto, marked Exhibit C, and made a part hereof. By terms of said Order No. R-1092-A, the Commission denied the application of Texas Pacific Coal & Oil Company insofar as it sought the termination of prorationing in the Jalmat Gas Pool, and cancellation and redistribution of allowables in said pool, but it did change the proration formula in said Pool from the formula set forth in Order No. R-520 to a formula based upon 25 per cent acreage and 75 per cent acreage times deliverability.

(d) On or about February 17, 1958, and within the time allowed by law, petitioner filed its application for rehearing

on Order No. R-1092-A, a copy of which application is attached hereto, marked Exhibit D, and made a part hereof. The Commission granted rehearing in accordance with its Order No. R-1092-B, copy of which is attached hereto, marked Exhibit E, and made a part hereof. After notice and hearing, the Commission on April 25, 1958, entered its Order No. R-1092-C, denying the relief sought in Petitioner's application for rehearing, and reaffirming the provisions of Order No. R-1092-A. A copy of said Order No. R-1092-C is attached hereto, marked Exhibit F, and made a part hereof.

5. Parties adverse to petitioner in the proceedings before the Oil Conservation Commission in Case No. 1327 were Texas Pacific Coal & Oil Company, El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company, each of which parties are named as respondents herein.

6. Petitioner alleges that Orders No. R-1092-A and No. R-1092-C are unreasonable, unlawful, arbitrary and capricious, and are therefore invalid and void on the following grounds, which grounds were raised in Petitioner's application for rehearing before the Oil Conservation Commission of New Mexico:

(a) The application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 entered in Case No. 673 before the Commission, and

therefore should not have been entertained by the Commission, and could not be the basis of a valid order in Case No. 1327 insofar as changing of the basis of allocation of allowable production from the Jalmat Gas Pool from 100 per cent acreage to include a deliverability factor in the proration formula is concerned.

(b) Order No. R-520, entered in Commission Case No. 673 constituted a final determination that the allocation of the allowable production from the Jalmat Gas Pool should be made on a 100 per cent acreage basis. No appeal was taken from the final decision of the Commission in Case No. 673, and the application in Case No. 1327 did not allege, and the record in said case does not show any change of conditions in the Jalmat Gas Pool, or that any waste would result from retention of the 100 per cent acreage allocation formula. On the basis of the application and the record, the Commission was without authority or jurisdiction to modify or change the proration formula ordered in Case No. 673.

(c) Texas Pacific Coal & Oil Company, applicant in Case No. 1327, was a participant in Case No. 673, and did not appeal from the final decision of the Commission set forth in Order No. R-520, and said company was estopped to request a change in the proration formula for the Jalmat Gas Pool in the absence of evidence showing a change in conditions in the pool from the time of entry of Order No. R-520 or evidence showing

that waste would result from the retention of the proration formula set forth in said Order No. R-520. No such allegations were made and no such evidence was introduced, and therefore the Commission was without authority to revise, modify or change Order No. R-520 to provide that the proration formula for the Jalmat Gas Pool should contain a deliverability factor.

(d) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A, Exhibit C. attached, and in its Order No. R-1092-C, Exhibit F attached, found there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells. Such findings by the Commission are contrary to the evidence in Case No. 1327, and are without support in the evidence introduced before the Commission, and are therefore invalid and void.

(e) Commission's Orders Nos. R-1092-A and R-1092-C are invalid in that even though it be assumed that it was proved by the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells," as found by the Commission, such a finding provides no basis authorized by statute for modification of the pre-existing acreage formula for allocation of allowable production of gas from the Jalmat Gas Pool.

(f) The Commission used as a basis for its decision in Case No. 1327, insofar as a deliverability factor is concerned, factors which are not contemplated or permitted by the statutes of New Mexico for determination of a proration formula. Finding No. 6 of the Commission's Order No. R-1092-A found: (1) that the inclusion of a deliverability factor in the Jalmat proration formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers in the pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(g) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration formula would result in economic waste in that it would require the expenditure of large sums of money by this petitioner and others in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in order to protect their correlative rights, although the ultimate recovery from the various tracts would not be appreciably increased thereby, and although efforts to increase the deliverabilities of wells in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the

proration formula, and Orders Nos. R-1092-A and R-1092-C are therefore in violation of and contrary to the Commission's statutory duty to prevent waste and protect correlative rights, and are therefore invalid and void.

(h) The evidence before the Commission showed that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in underground waste in that many wells in the Jalmat Gas Pool have been completed for many years, and their condition is such that the action required of a prudent operator under a proration formula containing a deliverability factor would necessarily result in the underground waste of natural gas, since efforts to increase the deliverability of older wells would result in the loss of some wells. Orders Nos. R-1092-A and R-1092-C are in violation of the Commission's statutory duty to prevent waste and protect correlative rights, and are therefore invalid and void.

(i) The uncontradicted evidence before the Oil Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be under the straight acreage formula. Evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the petitioner and other operators that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(j) The evidence shows that the inclusion of a deliverability factor in the proration formula as ordered by the Commission would result in irreparable injury to the correlative rights of petitioner and would deprive petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying lands owned by, or operated by, petitioner, without affording compensating counter drainage from other adjoining tracts, and would prevent petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this petitioner are located.

7. The orders of the Commission, review of which is here sought, are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the further reason that the Commission refused to permit this petitioner and other operators opposing the application in Case No. 1327 to present testimony with reference to property rights acquired by and during the existence of Order No. R-520 hereinabove referred to. In particular the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage allocation formula with reference to which this petitioner and other parties in comparable positions sustain

irreparable injury as the result of the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

8. Order Nos. R-1092-A and R-1092-C, insofar as they purport to institute a deliverability factor in the proration formula for the Jalmat Gas Pool, are so vague, indefinite and uncertain that this petitioner is without any means of determining the meaning thereof, and is not advised of his rights thereunder.

9. This petitioner is the owner of oil and gas leases and gas wells within the limits of the Jalmat Gas Pool, and is affected by the orders of the Commission review of which are here sought, and is dissatisfied with the disposition of its application for rehearing, and this Court has jurisdiction of this petition for review.

10. The formula for prorating allowable production set forth in Order No. R-1092-A which introduces a deliverability factor in the proration formula is not a reasonable basis upon which to prorate and allocate the allowable gas production from the Jalmat Gas Pool in that it fails to recognize or protect correlative rights, contrary to law, and will result in waste, and is therefore unlawful. The 100 per cent acreage factor heretofore in effect in said pool better protects the correlative rights of the owners in the pool and the prevention of waste, as required by law.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 65-3-22, New Mexico Statutes Annotated, 1953 Compilation, that:

1. Notice of this Petition for Review be served in the manner provided for the service of summons in civil proceedings upon the Oil Conservation Commission, upon Texas Pacific Coal & Oil Company, and upon the parties who entered appearances in support of the application of Texas Pacific Coal & Oil Company, being El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company.

2. This Petition be set for trial in the manner provided and with all the rights accorded by law, and that this Court review the action of the Oil Conservation Commission herein complained of.

3. This Court try this action de novo, as provided by law, and determine the issues of fact and law presented herein.

4. This Court enter its order vacating and setting aside Orders Nos. R-1092-A and R-1092-C of the Commission hereinabove referred to, and enter in lieu thereof its order affirming and making permanent Commission's Order No. R-520 of the Oil Conservation Commission.

5. This Court enter such other or further order or orders modifying or in lieu of Orders Nos. R-1092-A and R-1092-C as this court may determine to be proper.

6. That Petitioner have such other and further relief as may be proper.

Respectfully submitted,

AMERADA PETROLEUM CORPORATION

John S. Miller
P. O. Box 2040
Tulsa, Oklahoma

KELLAHIN & FOX
P. O. Box 1713
54½ East San Francisco
Santa Fe, New Mexico

By /s/ Jason W. Kellahin
Jason W. Kellahin

Attorneys for Petitioner, Amerada
Petroleum Corporation

EXHIBITS

TO
 AMERADA PETROLEUM CORPORATION
 PETITION FOR REVIEW
 OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page Volume I</u>
A	<u>15</u>
B	<u>16</u>
C	<u>21</u>
D*	
E	<u>37</u>
F	<u>39</u>

(*See next page.)

BEFORE THE OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO FOR THE
PURPOSE OF CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes Now Amerada Petroleum Corporation, a corporation, and
states to the Commission:

1. This Applicant is a corporation owning and operating
oil and gas leases and gas wells within the limits of the Jalmat
Gas Pool in Lea County, New Mexico.
2. Applicant participated in and presented testimony to
the Commission in hearings on the Application of Texas Pacific
Coal & Oil Company in the above styled and numbered case and as
an Operator in the Jalmat Gas Pool was affected by Order No.
R-1092-A entered by the Commission under date of January 29, 1958.
3. Applicant believe and therefore alleges that Order No.
R-1092-A aforesaid was erroneous, illegal and is invalid and by
reason thereof a rehearing is requested in respect to that portion

EXHIBIT "D"

of said Order which provides that effective July 1, 1958, a deliverability factor shall be included in the gas proration formula of the Jalmat Pool and the succeeding portions of said Order carrying into effect the decision of the Commission that deliverability shall be included in the proration formula subsequent to July 1, 1958, and as grounds therefor states:

(a) The Application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 in Case No. 673 of this Commission, entered on the 12th day of August, 1954, and therefore should not have been entertained by the Commission and cannot be made the basis of a valid Order in Case No. 1327 insofar as the inclusion of deliverability in the proration formula is concerned.

(b) The evidence introduced in this proceeding provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis as provided in Order No. R-1092-A of the Commission for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. Texas Pacific Coal & Oil Company was a party to Case

(Exhibit "D")

No. 673 and supported the inclusion of deliverability in the proration formula, which request was considered by the Commission, and Order No. R-520 was entered denying the request of said Texas Pacific Coal & Oil Company for the inclusion of deliverability in said formula. No appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered. On the basis of the record in this case, the Commission is without authority to modify or change the decision so reached in Case.No. 673.

(c) The inclusion of deliverability in the Jalmat Gas proration formula as ordered by Order No. R-1092-A is predicated on a finding by this Commission "that the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells." Applicant respectfully alleges that this finding of the Commission is contrary to and wholly without support in the evidence and is therefore invalid and void. In further support of the grounds here alleged, Applicant attaches hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts, which were the subject of testimony and exhibits presented by this applicant and other operators before the Commission on December 9, 1957, and the deliverabilities of the gas wells located on said tracts. Said exhibit is based

(Exhibit "D")

upon the testimony in the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, Applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists.

(d) The order of the Commission is invalid in that even though it be assumed that as found by the Commission it has been proved that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells" said finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for proration of gas produced from said pool.

(e) That the Commission has considered factors not permitted by the statutes of New Mexico in arriving at its decision which was the basis of Order No. R-1092-A. It is apparent that said Order was predicated in part upon (1) a finding that the inclusion of a deliverability factor in the Jalmat proration formula would result in the production of a greater percentage of the pool allowable and (2) that it would more nearly enable various gas purchasers to meet the market demand for gas in the Jalmat Gas Pool. Neither of said considerations provides any legal basis for the allocation of production under the statutes

(Exhibit "D")

of New Mexico.

(f) The Order of the Commission results in economic waste in that it will require the expenditure of an excess of \$30,000.00 by this Applicant to increase the deliverability of its gas wells in an effort to protect its correlative rights, although the ultimate recovery from the tracts operated by this applicant will not be appreciably increased thereby.

(g) The Order of the Commission will result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for some ten to twenty years and their condition is such that the action required of a prudent operator under the Order of the Commission will necessarily result in the underground waste of natural gas and the abuse of correlative rights of the owners of many of said wells.

(h) The Order of the Commission is invalid in that the Commission would have authority to change its existing proration order for the Jalmat Gas Pool only upon the proof by the Applicant in this case, by a preponderance of the evidence, either that waste would be reduced or eliminated or that correlative rights of the owners in the Jalmat Pool would be protected to a greater degree by the inclusion of deliverability in said proration formula. The burden of proof so assumed by Texas Pacific Coal & Oil Company was not discharged by Applicant.

(i) Order No. R-1092-A results in irreparable injury

(Exhibit "D")

to the correlative rights of this Applicant and deprives this Applicant of its property without due process of law in that it will permit production by offset operators of natural gas underlying the tracts owned by this Applicant without affording compensating counter-drainage from other adjoining tracts, and will prevent this Applicant from producing the recoverable gas in place in the Jalmat pool underlying the tract upon which the wells of Applicant are located.

(j) That Order No. R-1092-A discriminates against, and confiscates the vested property rights of, this Applicant who in good faith, and in reliance to Order No. 520, incurred costs to recomplete and to rework wells in the Jalmat Pool on the basis of the acreage proration formula provided for in Order No. R-520.

WHEREFORE, Applicant respectfully prays the Commission that a rehearing be granted in the above styled and numbered case as to that portion of the Order and Decision of the Commission providing for the inclusion of a deliverability factor in the allocation formula of the Jalmat Gas Pool subsequent to July 1, 1958.

AMERADA PETROLEUM CORPORATION

By /s/ H. D. Bushnell
H. D. Bushnell
Attorney for Applicant

(For Exhibit referred
to above, see
Page 36, Volume I.)

(Exhibit "D")

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,214, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d), 5 and 9.
2. It denies the genral allegations of paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are therefore invalid and void."
3. It denies the allegations of Paragraph 6(a) through 6(j), together with all legal conclusions stated therein.
4. It denies the allegation in Paragraph 7 that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void. It admits that the testimony referred to in Paragraph 7 was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
5. It denies the allegations of Paragraphs 8 and 10.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission

be affirmed.

3. That the Court enter such Order, or further Orders,
as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New
Mexico

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,214, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
Campbell & Russell
P. O. Box 721
Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,214, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas
MANUEL A. SANCHEZ
Santa Fe, New Mexico

By /s/ Manuel A. Sanchez

Attorneys for the above named respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,214, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4(a), 4(b), 4(c), 4(d), 5 and 9.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are therefore invalid and void".
3. It denies the allegations of Paragraph 6(a) through 6(j), together with all legal conclusions stated therein.
4. It denies the allegations of Paragraphs 7, 8, and 10.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

By: /s/ A. L. Grambling

COWAN & LEACH
Hobbs, New Mexico

By: /s/ Ray C. Cowan

Attorneys for Respondent,
El Paso Natural Gas Company

(Service certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,214, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY,
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,214, instruments identical in words and figures to those filed in Cause No. 16,213 as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sept. 9, 1958	50
Petitioners' Offer of Proof	Sept. 15, 1958	65
Statement of the Case	Sept. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sept. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sept. 3, 1959	99
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al.	Jan. 18, 1960	100

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Praecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, BE IT REMEMBERED, That on the 13th day of May, 1958, there was filed in the office of said Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16215 on the Civil Docket of said Court, wherein PAN AMERICAN PETROLEUM CORPORATION, a Corporation, is Petitioner, and concerning the same Orders of The Oil Conservation Commission of the State of New Mexico referred to in District Court Cause No. 16213 herein set forth, in words and figures as follow, to-wit: a

PETITION FOR REVIEW

COMES NOW Pan American Petroleum Corporation, herein referred to as "Petitioner", and respectfully states to the Court:

1. Petitioner is a corporation organized under the laws of the State of Delaware and duly admitted to do business in the State of New Mexico. Petitioner is the owner and operator of oil and gas properties and gas wells situate within the exterior boundaries of the Jalmat Gas Pool located in Lea County, New Mexico.

2. On January 29, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327 on the docket of said Commission. By the provisions of said Order, the gas proration formula theretofore applicable to the Jalmat Gas Pool, under which allocation of allowable was made on

a 100% acreage basis, was changed to include deliverability as a factor in the allocation of production as between the wells in said gas pool. The proration formula theretofore existing had been promulgated by Order No. R-520 entered by the Oil Conservation Commission of New Mexico in Case No. 673 on August 12, 1954. By the terms of said Order No. R-520, the 100% acreage formula had been in effect for the proration of allowable between wells in the Jalmat Pool at all times subsequent to January 1, 1955. A copy of Commission Order No. R-1092-A above referred to is attached hereto as Exhibit "A". A copy of order No. R-520 above referred to is identified as Exhibit "B" and filed with the Clerk of the District Court of Lea County, New Mexico, simultaneously with the filing of this Petition for Review and by reference incorporated herein. Copies of Order No. R-520 are in the possession of all parties to this proceeding.

3. Within twenty days after the entry of Order No. R-1092-A Petitioner filed an Application for Rehearing directed to said Order. A copy of said Application for Rehearing is attached hereto as Exhibit "C". A rehearing was granted by the Oil Conservation Commission and testimony was heard on March 25, 26 and 27, 1958. Thereafter, on the 25th day of April, 1958, the Oil Conservation Commission of New Mexico promulgated its Order No. R-1092-C refusing to modify its Order No. R-1092-A and in all respects reaffirming the provisions thereof. A copy of Order No. R-1092-C is attached hereto as Exhibit "D".

4. Petitioner was affected by the provisions of Order No. R-1092-A and is dissatisfied with the disposition of its Application for Rehearing, and by this proceeding seeks review as provided by law of Orders Nos. R-1092-A and R-1092-C above referred to.

5. The Jalmat Gas Pool, located in Lea County, New Mexico, was established by Order No. R-520, herein referred to as Exhibit "B". That Order instituted gas prorationing in the Jalmat Gas Pool effective January 1, 1955. While thereafter modified, insofar as here pertinent said Order continued in effect, and proration of natural gas allowables as between the wells in the Jalmat Gas Pool was made pursuant to its provisions subsequent to January 1, 1955, until the effective date of R-1092-A. Such allocation was based 100% upon the acreage dedicated to each well, as is more fully shown by the provisions of said Order.

6. Order No. R-520 was entered by the Oil Conservation Commission of New Mexico in Case No. 673 on the docket of said Commission. Said case was regularly advertised and heard, and all owners or operators interested were afforded an opportunity to present their views with respect to the institution of prorationing and the allocation formula to be used for the distribution of allowable among the various wells in the pool. The company respondents to this review action each participated

in said hearing. No appeal was taken by any party from Order No. R-520, which remained in effect until the action of the Oil Conservation Commission herein complained of.

7. Case No. 1327 came on to be heard before the Oil Conservation Commission of New Mexico on October 18, 1957, upon the application of Texas-Pacific Coal and Oil Company. A copy of said application is attached hereto as Exhibit "E". After hearings were held, the Commission, on January 29, 1958, entered Order No. R-1092-A, a copy of which is attached hereto as Exhibit "A", and made a part hereof. By the terms and provisions of Order No. R-1092-A, the Commission denied the application insofar as it sought the termination of prorationing in the Jalmat Gas Pool in Lea County, New Mexico, but it did change the proration formula in said Pool from the 100% acreage formula set forth in Order No. R-520 to a formula consisting of 25% acreage and 75% acreage times deliverability.

8. Petitioner alleges that Orders Nos. R-1092-A and R-1092-C are unreasonable, unlawful, arbitrary and capricious, are beyond the power of the Commission to enter, and are invalid for the following reasons:

(a) The Application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520

in Case No. 673 of this Commission entered on the 12th day of August, 1954, and, therefore, should not have been entertained by the Commission and cannot be made the basis of a valid order in Case No. 1327 insofar as the inclusion of deliverability in the proration formula is concerned.

(b) The evidence introduced in this proceeding provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis provided in Order No. R-1092-A for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. The company respondents hereto were parties to Case No. 673 in which case the inclusion of deliverability in the Jalmat proration formula was considered by the Commission, and Order No. R-520 was entered denying the request for the inclusion of deliverability in said formula. No appeal was taken by the company Respondents hereto from the final decision of the Commission so ordered. On the basis of the record in this case, the Commission is without authority to modify or change the decision so reached in Case No. 673.

(c) The inclusion of deliverability in the Jalmat Gas proration formula as ordered by Order No. R-1092-A is

predicated on a finding by this Commission "that the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells." Petitioner respectfully alleges that this finding of the Commission is contrary to, and wholly without support in, the evidence and is, therefore, invalid and void.

(d) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A found a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and recoverable gas in place under the tracts dedicated to the wells. This Finding was re-affirmed in Order No. R-1092-C, in the Commission's Finding No. 2 which was:

"(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission re-affirms its finding that Texas Pacific Coal & Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula."

Petitioner alleges that said finding of the Commission is contrary to and without support in the evidence introduced before the Commission and is invalid and void.

(e) The Order of the Commission is invalid in that even though it be assumed that it was proved by a preponderance of the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells," such a finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of gas produced from the Jalmat Gas Pool.

(f) The Commission used as a basis for its decision to include deliverability in the proration formula of the Jalmat Gas Pool certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of Order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat Proration Formula would result in the production of a greater percentage of pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(g) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration

formula would result in economic waste in that it would require the expenditure of large sums of money by this Petitioner and other operators in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in the pool in order to protect their correlative rights, although the ultimate recovery from the various tracts would not be appreciably increased thereby, and although efforts to increase the deliverability of wells in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the proration formula.

(h) The uncontradicted evidence before the Commission showed that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for ten to twenty years, and that their condition is such that the action required of a prudent operator under a proration formula including a deliverability factor would necessarily result in the underground waste of natural gas, since efforts to increase the deliverability of older wells would result in the loss of some wells.

(i) The uncontradicted evidence before the Oil Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would

be under the straight acreage formula. The evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the Petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(j) The evidence introduced before the Oil Conservation Commission showed that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of Petitioner and would deprive Petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying tracts owned by Petitioner without affording compensating counterdrainage from other adjoining tracts, and would prevent Petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this Petitioner are located.

9. All of the matters alleged hereinabove were set forth in Petitioner's Application for Rehearing before the Oil Conservation Commission, as shown by Exhibit "C" attached hereto.

10. The orders of the Commission, review of which is here sought, are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the further reason that

the Commission refused to permit this Petitioner and other petitioners opposing the application in Case No. 1327 to present testimony with reference to property rights acquired by them during the existence of Order No. R-520 hereinabove referred to. In particular the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage allocation formula with reference to which this Petitioner and other parties in comparable positions sustain irreparable injury as the result of the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

11. The formula for a proration of gas in the Jalmat Gas Pool promulgated by Order No. R-1092-A is not a reasonable basis upon which to allocate the production from said pool among the gas wells in the pool in that it fails to recognize or protect the correlative rights of the operators and royalty owners in the pool. On the contrary, said formula will result in economic waste, underground waste, and will violate the correlative rights of this Petitioner and other owners in said pool. By reason thereof, said Order is unlawful, unreasonable and void.

12. The findings of the Commission upon which Orders Nos. R-1092-A and R-1092-C are based are contrary to the evidence presented in said proceeding, are without support in the evidence, and are against the weight of the evidence heard by the Commission. By reason thereof, said orders are arbitrary, capricious and unlawful.

WHEREFORE, Petitioner respectfully prays the Court that;

(1) Orders Nos. R-1092-A and R-1092-C be reviewed by this Court and upon review be adjudicated to be unlawful and erroneous, and void, and that an appropriate order be entered by this Court vacating and holding for naught Orders Nos. R-1092-A and R-1092-C entered by the Oil Conservation Commission of New Mexico in Case No. 1327.

(2) Petitioner have such further other relief as the Court may determine to be proper.

/s/ J. K. Smith
 J. K. SMITH
 Oil & Gas Building
 Fort Worth, Texas

ATWOOD & MALONE

By /s/ Ross L. Malone
 Roswell Petroleum Building
 Roswell, New Mexico

Attorneys for Petitioner Pan
 American Petroleum Corporation

EXHIBITS

TO
PAN AMERICAN PETROLEUM CORPORATION
PETITION FOR REVIEW
OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page Volume I</u>
A	<u>21</u>
B	<u>15</u>
C*	
D	<u>39</u>
E	<u>16</u>

(*See next page.)

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULA-
TIONS FOR THE JALMAT GAS POOL IN LEA
COUNTY, NEW MEXICO.

APPLICATION FOR REHEARING

COMES NOW Pan American Petroleum Corporation, herein
referred to as "Applicant", and states to the Commission:

(1) Applicant is a corporation owning and operating oil
and gas leasea and gas wells within the limits of the Jalmat
Gas Pool in Lea County, New Mexico.

(2) Applicant participated in, and presented testimony
to the Commission in, the hearings on the Application of Texas
Pacific Coal & Oil Company in the above styled and numbered case
and as an operator in the Jalmat Gas Pool was affected by Order
No. R-1092-A entered by the Commission under date of January 29,
1958.

(3) Applicant believes and, therefore, alleges that
Order No. R-1092-A aforesaid was erroneous, illegal and is

EXHIBIT "C"

invalid and by reason thereof a rehearing is requested in respect to that portion of said Order which provides that effective July 1, 1958, a deliverability factor shall be included in the gas proration formula of the Jalmat Pool and the succeeding portions of said Order carrying into effect the decision of the Commission that deliverability shall be included in the proration formula subsequent to July 1, 1958, and as grounds therefor states:

(a) The Application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 in Case No. 673 of this Commission entered on the 12th day of August, 1954, and, therefore, should not have been entertained by the Commission and cannot be made the basis of a valid Order in Case No. 1327 insofar as the inclusion of deliverability in the proration formula is concerned.

(b) The evidence introduced in this proceeding provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis provided in Order No. R-1092-A for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. Texas Pacific

(Exhibit "C")

Coal & Oil Company was a party to Case No. 673 and supported the inclusion of deliverability in the proration formula, which request was considered by the Commission, and Order No. 520 was entered denying the request of said Texas Pacific Coal & Oil Company for the inclusion of deliverability in said formula. No. appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered. On the basis of the record in this case, the Commission is without authority to modify or change the decision so reached in Case No. 673.

(c) The inclusion of deliverability in the Jalmat Gas proration formula as ordered by Order No. R-1092-A is predicated on a finding by this Commission "that the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells." Applicant respectfully alleges that this finding of the Commission is contrary to, and wholly without support in, the evidence and is, therefore, invalid and void. In further support of the grounds here alleged, Applicant attaches hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts which were the subject of testimony and exhibits presented by this Applicant and other operators before the Commission on December 9, 1957, and the deliverability of the 58 gas wells located on said tracts.

(Exhibit "C")

Said Exhibit is based upon the testimony in the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, Applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists.

(d) The Order of the Commission is invalid in that even though it be assumed that as found by the Commission it has been proved that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for proration of gas produced from said pool.

(e) That the Commission has considered factors not permitted by the statutes of New Mexico in arriving at its decision which was the basis of Order No. R-1092-A. It is apparent from said Order that it was predicated in part upon, (1) a finding that the inclusion of a deliverability factor in the Jalmat proration formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers to meet the market

(Exhibit "C")

demand for gas in the Jalmat Gas Pool. Neither of said considerations provides any legal basis for the allocation of production under the statutes of New Mexico.

(f) The Order of the Commission results in economic waste in that it will require the expenditures of hundreds of thousands of dollars by the operators in the Jalmat Pool, including this operator, in an effort to increase the deliverability of the gas wells in said pool and thereby to protect their respective correlative rights, although the ultimate recovery of gas from said pool will not be appreciably increased by such expenditure.

(g) The Order of the Commission will result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for some tent to twenty years and their condition is such that the action required of a prudent operator under the Order of the Commission will necessarily result in the underground waste of natural gas and the abuse of correlative rights of the owners of many of said wells.

(h) Even if it be assumed that the Commission had jurisdiction and authority in this proceeding to change the basis on which production from said pool is allocated as between the operators thereof, such a change could be made only upon establishment by a preponderance of the evidence in this case, either that waste would be reduced or eliminated, or that the

(Exhibit "C")

correlative rights of the operators in the Jalmat Pool would be protected to a greater degree by such a change in the allocation formula. The burden of proof so assumed by Applicant Texas Pacific Coal & Oil Company was not discharged in this case and by reason thereof the Commission's Order is without support in the evidence.

(1) Order No. R-1092-A results in irreparable injury to the correlative rights of Applicant and deprives this Applicant of its property without due process of law in that,

1. It will permit production by offset operators of natural gas underlying the tracts owned by this Applicant without affording compensating counter-drainage from other adjoining tracts, and will prevent this Applicant from producing the recoverable gas in place in the Jalmat Pool underlying the tract upon which the wells of Applicant are located, and

2. Substantial expenditures have been made by this operator and other operators in said pool upon the basis of Order R-520, and in reliance upon the allocation of the production of said pool by this Commission on a 100% acreage basis, the benefits of which are destroyed by said Order.

WHEREFORE, Applicant respectfully prays the Commission that a rehearing be granted in the above styled and numbered case as to that portion of the Order and Decision of the Commission providing for the inclusion of a deliverability factor in the

(Exhibit "C")

allocation formula of the Jalmat Gas Pool subsequent to July 1,
1958.

PAN AMERICAN PETROLEUM CORPORATION

By: /s/ Ross L. Malone
of ATWOOD & MALONE
One of the Attorneys
Roswell Petroleum Building
Roswell, New Mexico

(For Exhibit Referred
to above, see Page
36, Volume I.)

(Exhibit "C")

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in Said Cause No. 16,215, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 9.
2. It denies the general allegations of Paragraph 8 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are beyond the power of the Commission to enter and are invalid."
3. It denies the allegations of Paragraph 8(a) through 8(j), including all legal conclusions set forth therein.
4. It denies the allegation in Paragraph 10 that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void. It admits that the testimony referred to in Paragraph 10 was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
5. It denies the allegations of Paragraphs 11 and 12.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New Mexico

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,215, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
Campbell & Russell
P. O. Box 721
Roswell, New Mexico

Attorneys for Respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,215, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas
MANUEL A. SANCHEZ
Santa Fe, New Mexico

By /s/ Manuel A. Sanchez

Attorneys for the above named respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,215, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 9.
2. It denies the general allegations of Paragraph 8 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are beyond the power of the Commission to enter and are invlaid".
3. It denies the allegations of Paragraphs 8(a) through 8(j) including all legal conclusions set forth therein.
4. It admits that certain testimony referred to in Paragraph 10 was excluded by the Commission, but states that such testimony was properly excluded as it was neither relative nor material in Case No. 1327.
5. It denies the allegations of Paragraphs 11 and 12, and states that the Commission is not empowered to consider evidence referred to therein.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders Nos. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153, El Paso, Texas

BY: /s/ A. L. Grambling

COWAN AND LEACH
Hobbs, New Mexico

By: /s/ Ray C. Cowan
Attorneys for Respondent,
El Paso Natural Gas Company

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,215, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY,
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

(Service of Pleading
certified to.)

AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,215, instruments identical in words and figures to those filed in Cause No. 16,213 as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sept. 9, 1958	50
Petitioners' Offer of Proof	Sept. 15, 1958	65
Statement of the Case	Sept. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sept. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sept. 3, 1959	99
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al	Jan. 18, 1960	100

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Fraecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, BE IT REMEMBERED, That on the 13th day of May, 1958, there was filed in the office of said Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16,217 on the Civil Docket of said Court, wherein SHELL OIL COMPANY is Petitioner, and concerning the same Orders of and case before the Oil Conservation Commission of the State of New Mexico as is referred to in District Court Cause No. 16,213, herein set forth, in words and figures a pleading Cause No. 16,217 as follow, to-wit:

PETITION FOR REVIEW

Comes now Shell Oil Company and for its petition for review of the action of the Oil Conservation Commission of the State of New Mexico in the above styled and numbered case and in the above Orders, alleges and states:

1. Petitioner is a corporation duly admitted to do business in the State of New Mexico, and is the owner of natural gas wells situate within the exterior boundaries of the Jalmat GasPool located in Lea County, New Mexico.

3. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327, on the docket of said Commission, changing the gas proration formula applicable to wells in the Jalmat Gas Pool,

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which formula had been promulgated by Order No. R-520 of the Oil Conservation Commission entered in Case No. 673 on August 12, 1954. Petitioner was a party to Cause No. 1327 and was affected by Order No. R-1092-A entered therein. Petitioner duly filed an Application for Rehearing directed to said Order No. R-1092-A and after rehearing the Oil Conservation Commission, on the 25th day of April, 1958, promulgated its Order No. R-1092-C reaffirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Orders Nos. R-1092-A and R-1092-C above referred to.

3. The Jalmat Gas Pool is located in Lea County, New Mexico. After extended hearings, the New Mexico Oil Conservation Commission entered on August 12, 1954, its Order No. R-520 in Case No. 673, a copy of which said Order No. R-520 is marked Exhibit "A", is filed with the Clerk of the District Court of Lea County simultaneously with the filing of this Petition for Review and by reference incorporated herein. Copies of said order are in the possession of all of the parties to this proceeding. Said Order instituted gas prorationing in the Jalmat Gas Pool effective January 1, 1955. The Order provided for the method of allocation of the allowable among the various wells in the Jalmat Gas Pool, and provided that such allocation should be

based 100% upon the acreage dedicated to the particular well. Said case was regularly advertised and heard, and all owners or operators or persons interested were afforded an opportunity to present their views with respect to the institution of prorationing and the allocation formula which was to be adopted for the distribution of production among the various wells in the Pool. No appeal was taken from Order No. R-520, which Order became effective and remained in full and controlling force and effect until the action of the New Mexico Oil Conservation Commission herein complained of.

4. Case No. 1327 came on to be heard before the Oil Conservation Commission of New Mexico on October 18, 1957, upon the application of Texas-Pacific Coal and Oil Company. A copy of said application is attached hereto as Exhibit "B". After hearings were held, the Commission on January 29, 1958, entered Order No. R-1092-A, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

By the terms and provisions of Order No. R-1092-A, the Commission denied the application insofar as it sought the termination of prorationing in the Jalmat Gas Pool in Lea County, New Mexico, but it did change the proration formula in said Pool from the formula set forth in Order No. R-520 which was based 100% upon acreage to a formula of 25% acreage and 75% acreage times deliverability.

5. Petitioner timely filed its application for rehearing before the Oil Conservation Commission of the State of New Mexico, a copy of which application is attached hereto as Exhibit "D" and made a part hereof. The Oil Conservation Commission granted a rehearing in accordance with the provisions of Order No. R-1092-B, a copy of which is attached hereto as Exhibit "E". After rehearing, the Oil Conservation Commission entered Order No. R-1092-C which found that the provisions of Order No. R-1092-A should remain in full force and effect. A copy of said Order No. R-1092-C is attached hereto as Exhibit "F" and made a part hereof.

6. Petitioner alleges that Orders Nos. R-1092-A and R-1092-C are unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and are invalid upon the following grounds, to-wit:

(a) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A found a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and recoverable gas in place under the tracts dedicated to the wells. This Finding was reaffirmed in Order No. R-1092-C, in the Commission's Finding No. 2 which was:

"(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission reaffirms its finding that Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between

the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula."

Petitioner alleges that said finding of the Commission is contrary to and without support in the evidence introduced before the Commission and is invalid and void.

(b) The Order of the Commission is invalid in that even though it be assumed that it was proved by a preponderance by the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", such a finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of gas produced from the Jalmat Gas Pool.

(c) The Commission used as a basis for its decision to include deliverability in the proration formula of the Jalmat Gas Pool, certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of Order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat Proration Formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool

to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(d) The uncontradicted evidence before the Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be under the straight acreage formula. The evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the Petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(e) The evidence introduced before the Oil Conservation Commission showed that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of Petitioner and would deprive Petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying tracts owned by Petitioner without affording compensating counter-drainage from

other adjoining tracts, and would prevent Petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this Petitioner are located.

7. All of the matters alleged hereinabove were set forth in Petitioner's Application for Rehearing before the Oil Conservation Commission, as shown by Exhibit "D" attached hereto.

8. The orders of the Commission, review of which is here sought, are further unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the reason that the Commission upon rehearing refused to permit this Petitioner and other petitioners opposing the application in Case No. 1327 to present testimony with reference to property rights acquired during the existence of Order No. R-520 hereinabove referred to. In particular, the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage allocation formula and the irreparable injury which would result from the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

9. The 100% acreage proration formula established in the Jalmat Field by official order in 1954 and prior thereto by custom

was the basis of large expenditures by, and changes in the contractual position of, the operators in that field and should be stable and not changed for the protection of the correlative rights of those operators unless the change is approved by a substantial majority of the operators in the field and unless it is very clear that the proposed new formula will better protect such correlative rights. Petitioner alleges that the formula approved in said Orders Nos. R-1092-A and R-1092-C is neither approved by the majority of the operators in the field nor clearly superior in the protection of correlative rights to the 100% acreage formula previously in effect.

10. Texas-Pacific Coal and Oil Company was the applicant in Case No. 1327, and El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company appeared in said case in support of the application, and the above companies together with the Oil Conservation Commission of New Mexico are named as respondents in this Petition in accordance with the statutes of New Mexico.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 19(b) Chapter 168 of the Laws of the State of New Mexico, 1949, Section 65-3-22(b), N.M.S.A. 1953, that:

1. Notice of this Petition for Review be served upon respondents in the manner provided for the service of summons in civil proceedings upon the adverse parties.

2. This Petition be set for trial, and upon the hearing thereof that this Court review the action of the Oil Conservation Commission herein complained of.

3. This Court try this action de novo and determine the issues of fact and law presented herein.

4. This Court enter its order vacating Orders Nos. R-1092-A and R-1092-C of the Commission hereinabove referred to.

5. This Court enter such other or further order in lieu of Orders Nos. R-1092-A and R-1092-C as the Court may determine to be proper.

JAMES A. LORE
RICHARD L. HUGHSTON
P. O. Box 1509
Midland, Texas

/s/ Howard Bratton
HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

Attorneys for Petitioner, Shell
Oil Company

E X H I B I T S

TO
SHELL OIL COMPANY
PETITION FOR REVIEW
OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page Volume I</u>
A	<u>15</u>
B	<u>16</u>
C	<u>21</u>
D*	
E	<u>37</u>
F	<u>39</u>

** *** **

*For Exhibit "D"
see next page.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

MOTION FOR REHEARING BY SHELL OIL COMPANY

TO THE COMMISSION:

Now comes Shell Oil Company, one of the operators in the Jalmat Gas Pool, who appeared and participated in the hearings of this matter and applies for a rehearing with reference to Order No. R-1092-A, entered in this case on January 29, 1958, on the following grounds, to-wit:

1. The Commission erred in making Finding 6 of the said order for the reason that its authority to regulate production of oil or gas is limited to that necessary to prevent waste and protect correlative rights, and it is without authority to regulate such production for the purpose of meeting a market demand that is greater than the pool's capacity when regulated so as to prevent waste and protect correlative rights.

EXHIBIT "D"

2. That part of Finding 5 of said order reading: "The applicant has proved that there is a general correlation between deliverability of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said well", is erroneous and without substantial evidence to support it.

The applicant offered not one word of proof that the gas in place under a tract dedicated to a well is the gas being produced by such well or even equivalent to the gas that said well might produce. To the contrary, Mr. Keller, the applicant's reservoir expert, stated that (Tr. (10-17-57) P. 59, 61, 62 and 64 and Tr. (later hearings) p. 61 to 62, 69, 78, 129, 133 and 135) his testimony was based on well figures and well reserves and a material balance approach, and that (Tr. (later hearings) p464) where the volume of gas measured by the material balance equation is located in respect to the lease lands, is not determinable from such a calculation. In his testimony he at no time tried to state where the gas was located. On the contrary, he said (Tr. (later hearings) p. 78) that correlative rights would be fully protected in his opinion if the takes as between two wells bore some reasonable relationship to the reserves of the two wells, and that (Tr. (later hearings) p. 133) he rejected the use of gas in place as a basis for protecting correlative rights because it was impossible to measure the gas in place with the information at hand in the Jalmat field. It is apparent, therefore,

that his whole approach to the matter of correlative rights differs from the statutory definition thereof, which is as follows:

"(a) The rules, regulations or orders of the Commission shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being in an amount, so far as can be practicably determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy." (New Mexico Statutes 65-3-14).

He at no time said that any "well reserve" discussed by him was under the tract on which that well was located.

As a matter of fact, it would be impossible to associate the deliverability of a well with the gas in place under the tract on which the well is located without piling inference on inference and making the conclusion so speculative, illogical and unsound that it should be rejected by this Commission. From Mr. Keller's equation that Deliverability = $T \times (P_s^2 - P_w^2) \times n \times K \times C_2$ (Applicant's Ex. 7). It is obvious that in associating deliverability with gas in place (this is gas in place in the well's reserve not that under the tract) he assumed that permeability (K) and the well completion factors (C_2) were relatively constant throughout the field and that variations in deliverability represented variation in net thickness of pay; for permeability and well completion factors do not affect the gas in place at all as

testified by Mr. Keller (Tr. (later hearings) p. 71-72), and if either of them varied widely as between wells, the variations in the deliverabilities of the wells would be relatively meaningless in so far as the net thickness of pay (the reserve affecting factor in said equation) is concerned. The way Mr. Keller related the deliverability to reserves was to say it represented net thickness in pay by transposing the said equation thusly:

$$T = \frac{\text{Deliverability}}{(P_g^2 - P_w^2)^n \times K \times C_2}$$

Obviously, in such an equation unless K (permeability) and C_2 (well completion factors) are constant T will vary not only as deliverabilities vary but also as K or C_2 vary. To attribute the reserve of a well to the tract on which it was located, he had further to assume that the quality of the reservoir under all of the tract was constantly that attributable to the well by his comparisons of deliverability. We, therefore, have a case of inference piled upon inference in reaching the conclusion that the deliverability of a well is in general correlation with the gas in place under the tract on which the well is located. Such reasoning is so speculative that it cannot form the basis of a conclusion.

Manning v. John Hancock Mutual Life Ins. Co., 100 U.S. 697,
25 L. Ed. 761;
De Baca v. Kuhn, 161 Pac. (2) 630, 49 N. M. 225;
Lumbermens Mutual Casualty Co. v. Vaughn, 174 SW(2)
1001 (Tex. Civ. App.).

3. The part of Finding 5 of said order reading "That the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula" is erroneous and without substantial evidence to support it because it is based on the false premise set forth in the first part of the said Finding 5.

4. Because the uncontradicted evidence shows that the Jalmat Gas Pool was developed under rules and/or practice whereby proration of production in said field was on a straight acreage basis, the changing of the pool rules to include a deliverability factor is erroneous, there being no evidence that clearly establishes that the change in the rules is necessary to protect the correlative rights of the operators in that pool or to prevent waste. The burden of proof should be much greater where changes in established rules are proposed and in such cases the Commission should not make changes unless the evidence that they are needed to prevent waste or protect the correlative rights of the operators (not to allow a market to be met) is clear and convincing.

5. The inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool violates the correlative rights of the operators and is erroneous.

6. The Application of Texas Pacific Coal & Oil Company in

Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. 520 in Case No. 6731 of this Commission entered on the 12th day of August, 1954, and therefore should not have been entertained by the Commission and cannot be made the basis of a valid Order in Case No. 1327 in so far as the inclusion of deliverability in the proration formula is concerned.

7. The evidence introduced in this proceeding provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis provided in Order No. R-1092-A for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. Texas Pacific Coal & Oil Company was a party to Case No. 673 and supported the inclusion of deliverability in the proration formula, which request was considered by the Commission, and Order No. 520 was entered denying the request of said Texas Pacific Coal & Oil Company for the inclusion of deliverability in said formula. No appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered. On the basis of the record in this case, the Commission is without authority to

modify or change the decision so reached in Case No. 673.

8. Even if it were conceded that there was substantial evidence to support Finding 5 of said Order, and we do not so concede, this Commission erred in amending the Jalmat Gas Pool's rules to place a deliverability factor in the proration formula because thereby it has jeopardized its very excellent reputation for fairness, wisdom and common sense. The addition of a deliverability "new deal" in the proration formula of the Jalmat Gas Pool after the pool has been developed on the understanding that proration would be on a straight acreage basis is unfair to those who so developed their properties in the pool. Admittedly, at the time they made their investments they knew that the rules might be changed. However, we believe that they were entitled to assume that the rules would not be changed unless it was clearly shown first, that they resulted in waste or violated correlative rights, and second, that no change based on a violation of correlative rights would be made against the expressed will of the vast majority of operators in the pool who should know better what protects their correlative rights than anyone else. At the hearings on this matter, no issue of waste was raised and the vast majority of the operators, the ones whose correlative rights are involved, opposed the inclusion of deliverability in the proration formula. Furthermore, even it be conceded that there was some proof of some "general"

correlation between the deliverability of a well and the gas in place under the tract on which the well is situated (which correlation we do not admit but deny), the proof thereof was not clear, but based upon inference upon inference. In a case of such doubtful correlation between well deliverability and tract reserve gas, it isn't wise, even if it is legal, to upset existing equities or to override the ideas of the majority of the operators in the pool concerning how best to protect their correlative rights.

This deliverability "new deal" in the Jalmat rules is not a safe step forward but a step backward toward the early proration attempts to interfere with the law of capture only so much as a limited market required by prorating the market demand between the wells on the basis of their relative potentials or deliverabilities or productivity, however it may be phrased. Such a method of proration allowed a high potential or deliverability well on a small tract to produce not only the oil or gas under that tract but under much of the surrounding tracts. The New Mexico Statutes reject the idea of any such method of proration. Obviously, an owner does not have a fair chance to recover the oil or gas under his land where the proration formula contains a potential or deliverability factor and non-marginal wells are allowed to produce at different rates based on their different potentials or deliverabilities rather than on differences in their

productive acreages.

WHEREFORE your petitioner prays that the Commission grant a rehearing in this case and set aside its Order No. R-1092-A in so far as a deliverability factor is thereby placed in the proration formula for the Jalmat Pool.

SETH, MONTGOMERY, FEDERICI & ANDREWS

By _____

301 Don Gaspar Avenue
Santa Fe, New Mexico

RICHARD L. HUGHSTON
Box 1509, Midland, Texas

ATTORNEYS FOR PETITIONER
SHELL OIL COMPANY

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,217, in words and figures as follows, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7 and 10.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid."
3. It denies the allegations of Paragraphs 6(a) through 6(e), including all legal conclusions set forth therein.
4. It denies the allegation in Paragraph 8 that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void. It admits that the testimony referred to in Paragraph 8 was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
5. It denies the allegations of Paragraph 9.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.

2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.

3. That the Court enter such Order, or further Orders, as it may determine to be proper.

s/ William J. Cooley

s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New Mexico

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,217, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
 Campbell & Russell
 P. O. Box 721
 Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
 certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,217, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By s// Manuel A. Sanchez

Attorneys for the above named Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,217, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7, and 10.

2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid".

3. It denies the allegations of Paragraphs 6(a) through 6(e), including all legal conclusions set forth therein.

4. It denies the allegations of Paragraphs 8 and 9.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.

2. That Orders Nos. R-1092-A and R-1092-C of the Commission be affirmed.

3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

BY: /s/ A. L. Grambling

COWAN AND LEACH
Hobbs, New Mexico

BY: /s/ Ray C. Cowan
Attorneys for Respondent,
El Paso Natural Gas Company

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,217, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY,
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,217, instruments identical in words and figures to those filed in Cause No. 16,213 as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sep. 9, 1958	50
Petitioners' Offer of Proof	Sep. 15, 1958	65
Statement of the Case	Sep. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sep. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sep. 3, 1959	99
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al	Jan. 18, 1960	100

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Praecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, BE IT REMEMBERED, That on the 13th day of May 1958, there was filed in the office of said Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16,218 on the Civil Docket of said Court, wherein THE ATLANTIC REFINING COMPANY is Petitioner (concerning the same Orders of and Case before the Oil Conservation Commission of the State of New Mexico as referred to in Cause No. 16,213 hereinbefore set forth), in words and figures as follow, to-wit: a

PETITION FOR REVIEW

Comes now The Atlantic Refining Company and for its petition for review of the action of the Oil Conservation Commission of the State of New Mexico in the above styled and numbered case and in the above Orders, alleges and states:

1. Petitioner is a corporation duly admitted to do business in the State of New Mexico, and is the owner of natural gas wells situate within the exterior boundaries of the Jalmat Gas Pool located in Lea County, New Mexico.

2. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327, on the docket of said Commission, changing the gas proration formula applicable to wells in the Jalmat Gas Pool, which formula had been promulgated by Order No. R-520 of the Oil

Conservation Commission entered in Case No. 673 on August 12, 1954. Petitioner was a party to Cause No. 1327 and was affected by Order No. R-1092-A entered therein, Petitioner duly filed an Application for Rehearing directed to said Order No. R-1092-A and after rehearing the Oil Conservation Commission, on the 25th day of April, 1958, promulgated its Order No. R-1092-C reaffirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Orders Nos. R-1092-A and R-1092-C above referred to.

3. The Jalmat Gas Pool is located in Lea County, New Mexico, After extended hearings, the New Mexico Oil Conservation Commission entered on August 12, 1954, its Order No. R-520 in Case No. 673, a copy of which said Order No. R-520 is marked Exhibit "A", is filed with the Clerk of the District Court of Lea County simultaneously with the filing of this Petition for Review and by reference incorporated herein. Copies of said order are in the possession of all of the parties to this proceedings. Said Order instituted gas prorationing in the Jalmat Gas Pool effective January 1, 1955. The Order provided for the method of allocation of the allowable among the various wells in the Jalmat Gas Pool, and provided that such allocation should be based 100% upon the acreage dedicated to the particular well. Said case was regularly advertised and heard, and all owners or operators or persons interested were

afforded an opportunity to present their views with respect to the institution of prorationing and the allocation formula which was to be adopted for the distribution of production among the various wells in the pool. No appeal was taken from Order No. R-520, which Order became effective and remained in full and controlling force and effect until the action of the New Mexico Oil Conservation Commission herein complained of.

4. Case No. 1327 came on to be heard before the Oil Conservation Commission of New Mexico on October 18, 1957, upon the application of Texas-Pacific Coal and Oil Company. A copy of said application is attached hereto as Exhibit "B". After hearings were held, the Commission on January 29, 1958, entered Order No. R-1092-A, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

By the terms and provisions of Order No. R-1092-A, the Commission denied the application insofar as it sought the termination of prorationing in the Jalmat Gas Pool in Lea County, New Mexico, but it did change the proration formula in said pool from the formula set forth in Order No. R-520 which was based 100% upon acreage to a formula of 25% acreage and 75% acreage times deliverability.

5. Petitioner timely filed its application for rehearing before the Oil Conservation Commission of the State of New Mexico, a copy of which application is attached hereto as Exhibit "D" and made a part hereof. The Oil Conservation Commission granted a

rehearing in accordance with the provisions of Order No. R-1092-B, a copy of which is attached hereto as Exhibit "E". After rehearing, the Oil Conservation Commission entered Order No. R-1092-C which found that the provisions of Order No. R-1092-A should remain in full force and effect. A copy of said Order No. R-1092-C is attached hereto as Exhibit "F" and made a part hereof.

6. Petitioner alleges that Orders Nos. R-1092-A and R-1092-C are unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and are invalid upon the following grounds, to-wit :

(a) The application of Texas-Pacific Coal and Oil Company in Case No. 1327 to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 in Case No. 673 of the Oil Conservation Commission, and, therefore, should not have been entertained by the Commission, and could not be the basis of a valid order in Case No. 1327 insofar as such order changes the basis of allocation of production from the Jalmat Gas Pool from a 100% acreage basis to include a deliverability factor in the proration formula.

(b) Order No. R-520 entered by the Oil Conservation Commission in Case No. 673 constituted a final decision that the proration formula for the Jalmat Gas Pool should be on a 100%

acreage basis. No appeal was taken from the final decision of the Commission so ordered, and the application in Case No. 1327 did not allege and the record in said case does not show any change of conditions in the Jalmat Gas Pool or any waste which would result from retention of the 100% acreage allocation formula. On the basis of the application and the record, the Commission was without authority or jurisdiction to modify or change the proration formula set forth in Order No. R-520.

(c) Texas-Pacific Coal and Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and did not appeal from the final decision of the Commission entered in Order No. R-520, and said company was estopped to request a change in the proration formula for the Jalmat Gas Pool in the absence of evidence showing a change in conditions in the pool from the time of entry of Order No. R-520 or evidence showing that waste would result from the retention of the 100% acreage formula. No such allegations were made and no such evidence was introduced, and therefore the Commission was without authority to revise, modify or change Order No. R-520 to provide that the proration formula for the Jalmat Gas Pool should include a deliverability factor.

(d) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A found a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and

recoverable gas in place under the tracts dedicated to the wells.

This Finding was reaffirmed in Order No. R-1092-C, in the

Commission's Finding No. 2 which was:

"(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission reaffirms its finding that Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula."

Petitioner alleges that said finding of the Commission is contrary to and without support in the evidence introduced before the Commission and is invalid and void.

(e) The Order of the Commission is invalid in that even though it be assumed that it was proved by a preponderance by the evidence: "that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", such a finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of gas produced from the Jalmat Gas Pool.

(f) The Commission used as a basis for its decision to include deliverability in the proration formula of the Jalmat Gas Pool, certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration

formula for a gas pool. Finding No. 6 of Order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat Proration Formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(g) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration formula would result in economic waste in that it would require the expenditure of large sums of money by this Petitioner and other operators in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in the pool in order to protect their correlative rights, although the ultimate recovery from the various tracts would not be appreciably increased thereby, if at all, and although efforts to increase the deliverability of wells in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the proration formula.

(h) The uncontradicted evidence before the Commission

showed that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for ten to twenty years, and that their condition is such that the action required of a prudent operator under a proration formula including a deliverability factor would necessarily result in the underground waste of natural gas, since efforts to increase the deliverability of older wells would result in the loss of some wells.

(i) The uncontradicted evidence before the Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be under the straight acreage formula. The evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the Petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(j) The evidence introduced before the Oil Conservation Commission showed that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of Petitioner and would deprive Petitioner of its property without

due process of law in that it would permit the production by offset operators of natural gas underlying tracts owned by Petitioner without affording compensating counter-drainage from other adjoining tracts, and would prevent Petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this Petitioner are located.

7. All of the matters alleged hereinabove were set forth in Petitioner's Application for Rehearing before the Oil Conservation Commission, as shown by Exhibit "D" attached hereto.

8. The Orders of the Commission, review of which is here sought, are further unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the reason that the Commission upon rehearing refused to permit this Petitioner and other petitioners opposing the application in Case No. 1327 to present testimony with reference to property rights acquired during the existence of Order No. R-520 hereinabove referred to. In particular, the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage allocation formula and the irreparable injury which

would result from the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

9. The formula set forth in Order No. R-1092-A which introduces a deliverability factor into the proration formula is not a reasonable basis on which to allocate the production from the Jalmat Gas Pool among the gas wells in the pool in that it fails to recognize or protect the correlative rights of the owners and operators in the pool. The 100% acreage formula for the proration of gas better protects the correlative rights of the operators and owners in the pool. The inclusion of a deliverability factor in the proration formula would result in economic waste, underground waste, and would violate correlative rights including those of this petitioner. Petitioner will introduce evidence in support of the above allegations upon the trial of this cause.

10. Texas-Pacific Coal and Oil Company was the applicant in Case No. 1327, and El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company appeared in said case in support of the application, and the above companies together with the Oil Conservation Commission of New Mexico are named as respondents in this Petition in accordance with the statutes of New Mexico.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 19(b) Chapter 168 of the Laws of the State

of New Mexico, 1949, Section 65-3-22(b), N.M.S.A. 1953, that:

1. Notice of this Petition for Review be served upon respondents in the manner provided for the service of summons in civil proceedings upon the adverse parties.

2. This Petition be set for trial, and upon the hearing thereof that this Court review the action of the Oil Conservation Commission herein complained of.

3. This Court try this action de novo and determine the issues of fact and law presented herein.

4. This Court enter its order vacating Orders Nos. R-1092-A and R-1092-C of the Commission hereinabove referred to.

5. This Court enter such other or further order in lieu of Orders Nos. R-1092-A and R-1092-C as the Court may determine to be proper.

CHARLES B. ELLARD
A. B. TANCO
P. O. Box 2819
Dallas, Texas

/s/ Howard Bratton
HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

Attorneys for Petitioner, The Atlantic
Refining Company

EXHIBITS

OF
 THE ATLANTIC REFINING COMPANY
 PETITION FOR REVIEW
OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page Volume I</u>
A	<u>15</u>
B	<u>16</u>
C	<u>21</u>
D*	
E	<u>37</u>
F	<u>39</u>

** *** **

(*For Exhibit D
 see next page.)

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes now The Atlantic Refining Company and requests a rehearing in the above case with respect to the matters herein-after referred to which were determined by Order No. R-1092-A of the New Mexico Oil Conservation Commission in connection with the above styled case, and in support thereof respectfully shows:

I.

Applicant owns and operates oil and gas leases and gas wells within the Jalmat Gas Pool in Lea County, New Mexico. Applicant is affected by Order No. R-1092-A, which was entered by the Commission under date of January 29, 1958.

EXHIBIT "D"

II.

Order No. R-1092-A contains two findings, Nos. 5 and 6, which are the basis upon which Finding No. 7 as to deliverability is made, and upon which said Order amends previous orders of the Commission to include a deliverability factor in the proration formula. Paragraph 2 of Order No. R-1092-A amends all orders previously issued by the Commission to provide for an "acreage factor" for allowable purposes. Paragraph 3 of Order No. R-1092-A provides that Order No. R-520 as amended by Order No. R-967 be revised effective July 1, 1958, to include a deliverability factor in the gas proration formula of the Jalmat Gas Pool. Said paragraph provides for the deliverability factor and sets forth how it shall be carried into effect.

III.

Applicant alleges that the Commission was without jurisdiction or authority, and was estopped in equity and justice to entertain the application in regard to the above matters in Order No. R-1092-A, and that Texas Pacific Coal & Oil Company was estopped to apply for an amendment to the proration formula for the Jalmat Gas Pool, and that if the Commission did have jurisdiction and there was no estoppel, the said order, in regard to the above matters, was discriminatory, erroneous, illegal and invalid, and a rehearing is requested in respect to said matters. In support thereof, applicant states:

(Exhibit "D")

1. The application of Texas Pacific Coal & Oil Company in case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool constituted a collateral attack upon Order No. 520 in Case No. 674 of this Commission, entered on the 12th day of August 1954, and the Commission was without jurisdiction to entertain said application, and said application cannot be made the basis of a valid order in Case No. 1327 insofar as the changing of the basis for allocation of production from the Jalmat Gas Pool from a 100% acreage basis to include a deliverability factor in the proration formula.

2. Order No. R-520 entered by this Commission in Case No. 673 constituted a final decision that the proration formula for the Jalmat Gas Pool should be on a 100% acreage basis. No appeal was taken from the final decision of the Commission so ordered, and the Commission cannot now on the basis of the application and record in this cause enter a valid order changing the basis for the allocation of production from the Jalmat Gas Pool.

3. Texas Pacific Coal & Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and in said case supported the inclusion of deliverability in the proration formula, which request was considered by the Commission and denied therein. No appeal was taken by Texas Pacific Coal & Oil

(Exhibit "D")

Company from the final decision of the Commission so ordered and said company is now estopped to request a change in the proration formula for the Jalmat Gas Pool. On the basis of the record in this case, the Commission is without authority to revise, modify or change Order No. R-520 to now provide that the proration formula for the Jalmat Gas Pool shall include a deliverability factor.

4. Order No. R-1092-A is invalid and discriminatory and deprives this applicant of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States and in violation of Article II, Section 18 of the Constitution of the State of New Mexico in that this applicant has acted in reliance on Order No. R-520, and has performed drilling operations, recompletion operations, and has expended substantial sums of money on its properties in the Jalmat Gas Pool after the issuance of said Order, and it has vested property rights therein, which property rights will be impaired by the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool.

5. As a result of the aforesaid expenditures and the other actions by this applicant in good faith in reliance upon the existing proration rules in Order No. R-520, the Commission is, as a matter of equity and justice, estopped from amending said proration order to include a deliverability factor, which amendment

(Exhibit "D")

would discriminate against this applicant.

6. Finding No. 5 in Order No. R-1092-A is:

"That the Applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in more equitable allocation of the gas production in said pool than under the present gas proration formula."

Applicant alleges that this finding is contrary to, and wholly without support in the evidence and is therefore erroneous and invalid. In further support in the evidence have alleged, there is attached hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts which were the subject of testimony and exhibits presented by this applicant and other operators before the Commission on December 9, 1957, and the deliverability of the 58 gas wells located on said tracts. Said exhibit is based upon the testimony and the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists, and that therefore the entire Finding No. 5 is erroneous and invalid.

7. Even though it is assumed that it has been proved as

(Exhibit "D")

stated in Finding No. 5 that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said Finding provides no basis authorized by the Statutes of New Mexico for modification of the formula prescribed by Order No. R-520 for the proration of gas produced from the Jalmat Gas Pool.

8. The Commission has used as a basis for its decision to include deliverability in the proration formula certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of said Order No. R-1092-A is:

"That the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool will result in the production of a greater percentage of the pool allowable, and that it will more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool."

Neither of said considerations provides any legal basis for the allocation of production among the gas wells in a gas pool.

9. Order No. R-1092-A will result in underground waste since many wells in the Jalmat Gas Pool are old wells and the condition of many of such wells is such that the action required of a prudent operator under Order No. R-1092-A will necessarily result in the underground waste of natural gas.

10. Order No. R-1092-A will result in economic waste in that it will require the expenditure of a large sum of money by this

(Exhibit "D")

applicant to increase the deliverability of its gas wells in an effort to protect its correlative rights, although the ultimate recovery from the tracts owned by this applicant will not be appreciably increased thereby, and although efforts of operators to increase the deliverability of wells in the Jalmat Gas Pool cannot prevent the violation of correlative rights which will result from the inclusion of a deliverability factor in the proration formula.

11. Order No. R-1092-A is invalid in that the burden of proof was upon the applicant in this case, by a preponderance of the evidence, to show a valid reason on a ground authorized by the statutes of New Mexico for the inclusion of deliverability in the proration formula for the Jalmat Gas Pool, and the applicant did not sustain this burden of proof.

12. Order No. R-1092-A results in irreparable injury to the property rights of applicant and to its correlative rights in that it permits drainage from under tracts in the Jalmat Gas Pool owned by this applicant, which drainage is not equalized by counter drainage. This deprives applicant of its property without due process of law in violation of Amendment 14 to the Constitution of the United States and Article II, Section 18 of the Constitution of the State of New Mexico.

WHEREFORE, Applicant respectfully requests the Commission that a rehearing be granted in the above case as to those portions

(Exhibit "D")

of Order No. R-1092-A which amend the previous orders of the Commission to provide for the inclusion of a deliverability factor in the allocation formula of the Jalmat Gas Pool subsequent to July 1, 1958, and that after rehearing the Commission rescind its order in the above respects, and retain the proration formula established by Order No. R-520.

THE ATLANTIC REFINING COMPANY

A. B. TANCO
P. O. Box 2819
Dallas, Texas

/s/ Howard C. Bratton
HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,218, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7 and 10.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid."
3. It denies the allegations of Paragraphs 6(a) through 6(j), including all legal conclusions set forth therein.
4. It denies the allegations of Paragraph 8 that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invlaid and void. It admits that the testimony referred to in Paragraph 8 was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
5. It denies the allegations of Paragraph 9 and specifically denies that the Petitioner may, without limitation, intoduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such order, or further Orders, as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New
Mexico

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,218, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
Campbell & Russell
P. O. Box 721
Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,218, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By: /s/ Manuel A. Sanchez

Attorneys for the above named Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,218, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7 and 10.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid".
3. It denies the allegations of Paragraphs 6(a) through 6(j), including all legal conclusions set forth therein.
4. It admits that certain testimony referred to in Paragraph 8 was excluded by the Commission, but states that such testimony was properly excluded as it was neither relative nor material in Case No. 1327.
5. It denies the allegations of Paragraph 9 and specifically denies that the Petitioner may, without limitation, introduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders Nos. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

By: /s/ A. L. Grambling

COWAN AND LEACH
Hobbs, New Mexico

By: /s/ Ray C. Cowan
Attorneys for Respondent,
El Paso Natural Gas Company

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,218, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent!

(Service of pleading
certified to.)

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AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,218, instruments, identical in words and figures to those filed in Cause No. 16,213, as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sept. 9, 1958	50
Petitioners' Offer of Proof	Sept. 15, 1958	65
Statement of the Case	Sept. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sept. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sept. 3, 1959	99

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al	Jan. 18, 1960	100
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Praecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, BE IT REMEMBERED, That on the 13th day of May 1958, there was filed in the office of said Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16,219 on the Civil Docket of said Court, wherein STANDARD OIL COMPANY OF TEXAS is Petitioner (concerning the same Orders of and Case before the Oil Conservation Commission of the State of New Mexico as referred to in Cause No. 16,213 hereinbefore set forth), in words and figures as follow, to-wit: a

PETITION FOR REVIEW

Comes now Standard Oil Company of Texas and for its petition for review of the action of the Oil Conservation Commission of the State of New Mexico in the above styled and numbered case and in the above orders, alleges and states:

1. Petitioner is a corporation duly admitted to do business in the State of New Mexico, and is the owner of natural gas wells situate within the exterior boundaries of the Jalmat Gas Pool located in Lea County, New Mexico.

2. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327, on the docket of said Commission, changing the gas proration formula applicable to wells in the Jalmat Gas Pool, which formula had been promulgated by Order No. R-520 of the

Oil Conservation Commission entered in Case No. 673 on August 12, 1954. Petitioner was a party to Cause No. 1327 and was affected by Order No. R-1092-A entered therein. Petitioner duly filed an Application for Rehearing directed to said Order No. R-1092-A and after rehearing the Oil Conservation Commission, on the 25th day of April, 1958, promulgated its Order No. R-1092-C reaffirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Orders Nos. R-1092-A and R-1092-C above referred to.

3. The Jalmat Gas Pool is located in Lea County, New Mexico. After extended hearings the New Mexico Oil Conservation Commission entered on August 12, 1954, its Order No. R-520 in case No. 673, a copy of which said Order No. R-520 is marked Exhibit "A", is filed with the Clerk of the District Court of Lea County simultaneously with the filing of this Petition for Review and by reference incorporated herein. Copies of said order are in the possession of all of the parties to this proceeding. Said Order instituted gas prorationing in the Jalmat Gas Pool effective January 1, 1955. The Order provided for the method of allocation of the allowable among the various wells in the Jalmat Gas Pool, and provided that such allocation should be based 100% upon the acreage dedicated to the particular well.

Said case was regularly advertised and heard, and all owners or operators or persons interested were afforded an opportunity to present their views with respect to the institution of prorationing and the allocation formula which was to be adopted for the distribution of production among the various wells in the Pool. No appeal was taken from Order No. R-520, which Order became effective and remained in full and controlling force and effect until the action of the New Mexico Oil Conservation Commission herein complained of.

4. Case No. 1327 came on to be heard before the Oil Conservation Commission of New Mexico on October 18, 1957, upon the application of Texas-Pacific Coal and Oil Company. A copy of said application is attached hereto as Exhibit "B". After hearings were held, the Commission on January 29, 1958, entered Order No. R-1092-A, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

By the terms and provisions of Order No. R-1092-A, the Commission denied the application insofar as it sought the termination of prorationing in the Jalmat Gas Pool in Lea County, New Mexico, but it did change the proration formula in said Pool from the formula set forth in Order No. R-520 which was based 100% upon acreage to a formula of 25% acreage and 75% acreages times deliverability.

5. Petitioner timely filed its application for rehearing

before the Oil Conservation Commission of the State of New Mexico, a copy of which application is attached hereto as Exhibit "D" and made a part hereof. The Oil Conservation Commission granted a rehearing in accordance with the provisions of Order No. R-1092-B, a copy of which is attached hereto as Exhibit "E". After rehearing, the Oil Conservation Commission entered Order No. R-1092-C which found that the provisions of Order No. R-1092-A should remain in full force and effect. A copy of said Order No. R-1092-C is attached hereto as Exhibit "F" and made a part hereof.

6. Petitioner alleges that Orders Nos. R-1092-A and R-1092-C are unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and are invalid upon the following grounds, to-wit:

(a) The application of Texas-Pacific Coal and Oil Company in Case No. 1327 to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. R-520 in case No. 673 of the Oil Conservation Commission and, therefore, should not have been entertained by the Commission, and could not be the basis of a valid order in Case No. 1327 insofar as the changing of the basis of allocation of production from the Jalmat Gas Pool from a 100% acreage basis to include a deliverability factor in the proration formula.

(b) Order No. R-520 entered by the Oil Conservation Commission in Case No. 673 constituted a final decision that the proration formula for the Jalmat Gas Pool should be on a 100% acreage basis. No appeal was taken from the final decision of the Commission so ordered, and the application in Case No. 1327 did not allege and the record in said case does not show any change of conditions in the Jalmat Gas Pool or any waste which would result from retention of the 100% acreage allocation formula. On the basis of the application and the record, the Commission was without authority or jurisdiction to modify or change the proration formula set forth in Order No. R-520.

(c) Texas-Pacific Coal and Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and did not appeal from the final decision of the Commission entered in Order No. R-520, and said company was estopped to request a change in the proration formula for the Jalmat Gas Pool in the absence of evidence showing a change in conditions in the pool from the time of entry of Order No. R-520 or evidence showing that waste would result from the retention of the 100% acreage formula. No such allegations were made and no such evidence was introduced, and therefore the Commission was without authority to revise, modify or change Order No. R-520 to provide that the proration formula for the Jalmat Gas Pool should include a deliverability factor.

(d) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A found a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and recoverable gas in place under the tracts dedicated to the wells. This Finding was reaffirmed in Order No. R-1092-C, in the Commission's Finding No. 2 which was:

"(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission reaffirms its finding that Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula."

Petitioner alleges that said finding of the Commission is contrary to and without support in the evidence introduced before the Commission and is invalid and void.

(e) The Order of the Commission is invalid in that even though it be assumed that it was proved by a preponderance by the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", such a finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of gas produced from the Jalmat Gas Pool.

(f) The Commission used as a basis for its decision to include deliverability in the proration formula of the Jalmat Gas Pool, certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of Order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat Proration Formula would result in the production of a greater percentage of pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(g) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration formula would result in economic waste in that it would require the expenditure of large sums of money by this Petitioner and other operators in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in the pool in order to protect their correlative rights, although the ultimate recovery from the various tracts would not be appreciably increased thereby, and although efforts to increase the deliverability of wells

in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the proration formula.

(h) The uncontradicted evidence before the Commission showed that the inclusion of a deliverability factor in the Jalmat Gas Pool proration formula would result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for ten to twenty years, and that their condition is such that the action required of a prudent operator under a proration formula including a deliverability factor would necessarily result in the underground waste of natural gas, since efforts to increase the deliverability of older wells would result in the loss of some wells.

(i) The uncontradicted evidence before the Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be under the straight acreage formula. The evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the Petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(j) The evidence introduced before the Oil Conservation

Commission showed that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of Petitioner and would deprive Petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying tracts owned by Petitioner without affording compensating counter-drainage from other adjoining tracts, and would prevent Petitioner from producing the recoverable gas in place in the Jalmat Gas Pool underlying the tracts upon which the wells of this Petitioner are located.

7. All of the matters alleged hereinabove were set forth in Petitioner's Application for Rehearing before the Oil Conservation Commission, as shown by Exhibit "D" attached hereto.

8. The orders of the Commission, review of which is here sought, are further unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void for the reason that the Commission upon rehearing refused to permit this Petitioner and other petitioners opposing the application in Case No. 1327 to present testimony with reference to property rights acquired during the existence of Order No. R-520 hereinabove referred to. In particular, the Commission refused to permit this and other operators to present evidence as to purchases of producing properties and royalties and loans made upon producing properties and royalties based upon the proration formula existing under

Order No. R-520, and likewise refused the opportunity to present proof of communitization of properties which had occurred under the acreage allocation formula and the irreparable injury which would result from the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool.

9. The formula set forth in Order No. R-1092-A which introduces a deliverability factor into the proration formula is not a reasonable basis on which to allocate the production from the Jalmat Gas Pool among the gas wells in the pool in that it fails to recognize or protect the correlative rights of the owners and operators in the pool. The 100% acreage formula for the proration of gas better protects the correlative rights of the operators and owners in the pool. The inclusion of a deliverability factor in the proration formula would result in economic waste, underground waste, and would violate correlative rights including those of this petitioner. Petitioner will introduce evidence in support of the above allegations upon the trial of this cause.

10. Texas-Pacific Coal and Oil Company was the applicant in case No. 1327, and El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company appeared in said case in support of the application, and the above companies together with the Oil Conservation Commission of New Mexico are named as respondents in this Petition in accordance with the statutes of New Mexico.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 19(b) Chapter 168 of the Laws of the State of New Mexico, 1949, Section 65-3-22(b), N.M.S.A. 1953, that:

1. Notice of this Petition for Review be served upon respondents in the manner provided for the service of summons in civil proceedings upon the adverse parties.
2. This Petition be set for trial, and upon the hearing thereof that this Court review the action of the Oil Conservation Commission herein complained of.
3. This Court try this action de novo and determine the issues of fact and law presented herein.
4. This Court enter its order vacating Orders Nos. R-1092-A and R-1092-C of the Commission hereinabove referred to.
5. This Court enter such other or further order in lieu of Orders Nos. R-1092-A and R-1092-C as the Court may determine to be proper.

C. W. PROCTOR
P. O. Box 1249
Houston, Texas

/s/ Howard Bratton
HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

Attorneys for Petitioner, Standard
Oil Company of Texas

E X H I B I T S

TO
 STANDARD OIL COMPANY OF TEXAS
 PETITION FOR REVIEW
OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page Volume I</u>
A	15
B	16
C	21
D*	
E	37
F	39

** *** **

(*For Exhibit D
 see next page.)

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes Now Standard Oil Company of Texas, a corporation, and
states to the Commission:

(1) This Applicant is a corporation owning oil and gas
leases and gas wells within the limits of the Jalmat Gas Pool
in Lea County, New Mexico.

(2) Applicant participated in the hearings before the
Commission on the Application of Texas Pacific Coal & Oil
Company in the above styled and numbered case and as an Operator
in the Jalmat Gas Pool was affected by Order No. R-1092-A
entered by the Commission under date of January 29, 1958.

(3) Applicant believes and therefore alleges that Order
No. R-1092-A aforesaid was erroneous, illegal and is invalid and

EXHIBIT "D"

by reason thereof a rehearing is requested in respect to that portion of said Order which provides that effective July 1, 1958, a deliverability factor shall be included in the gas proration formula of the Jalmat Pool and the succeeding portions of said Order carrying into effect the decision of the Commission that deliverability shall be included in the proration formula subsequent to July 1, 1958, and as grounds therefor states:

(a) The evidence introduced in this proceeding provides no basis upon which a valid order could be entered by the Commission changing the basis for the allocation of production from the Jalmat Gas Pool from a 100% acreage basis to the basis provided in Order No. R-1092-A for the reason that Order No. R-520 entered by this Commission in Case No. 673 constituted a final determination that deliverability should not be included in the proration formula of the Jalmat Gas Pool. Texas Pacific Coal & Oil Company was a part to Case No. 673 and supported the inclusion of deliverability in the proration formula, which request was considered by the Commission, and Order No. 520 was entered denying the request of said Texas Pacific Coal & Oil Company for the inclusion of deliverability in said formula. No appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered. On the basis of the record in this case, the Commission is without authority to modify or change the decision so reached in Case No. 673.

EXHIBIT "D"

(b) The inclusion of deliverability in the Jalmat Gas proration formula as ordered by Order No. R-1092-A is predicated on a finding by this Commission "that the applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells". Applicant respectfully alleges that this finding of the Commission is contrary to, and wholly without support in, the evidence and is therefore invalid and void. In further support of the grounds here alleged, Applicant attaches hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts which were the subject of testimony and exhibits presented by this applicant and other operators before the Commission on December 9, 1957, and the deliverability of the 58 gas wells located on said tracts. Said exhibit is based upon the testimony in the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, Applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists.

(c) That the Commission has considered factors not permitted by the statutes of New Mexico in arriving at its

(Exhibit "D")

decision which was the basis of Order No. R-1092-A. It is apparent from said Order that it was predicated in part upon, (1) a finding that the inclusion of a deliverability factor in the Jalmat proration formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers to meet the market demand for gas in the Jalmat Gas Pool. Neither of said considerations provides any legal basis for the allocation of production under the statutes of New Mexico.

(d) The Application of Texas Pacific Coal & Oil Company in Case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool, constituted a collateral attack upon Order No. 520 in Case No. 6731 of this Commission entered on the 12th day of August, 1954, and therefore should not have been entertained by the Commission and cannot be made the basis of a valid Order in Case No. 1327 insofar as the inclusion of deliverability in the proration formula is concerned.

(e) The order of the Commission is invalid in that even though it be assumed that as found by the Commission it has been proved that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said finding provides no basis authorized by the statutes of New Mexico

(Exhibit "D")

for modification of the pre-existing acreage formula for proration of gas produced from said pool.

(f) The order of the Commission results in economic waste in that it will require the expenditure of an excess of One Hundred Thousand Dollars by this applicant to increase the deliverability of its gas wells in an effort to protect its correlative rights, although the ultimate recovery from such wells will not be appreciably increased thereby.

(g) The Order of the Commission will result in underground waste in that many of the wells in the Jalmat Gas Pool have been completed for some ten to twenty years and their condition is such that the action required of a prudent operator under the Order of the Commission will necessarily result in the underground waste of natural gas and the abuse of correlative rights of the owners of many of said wells.

(h) The Order of the Commission is invalid in that the Commission would have authority to change its existing proration order for the Jalmat Gas Pool only upon the proof by the Applicant in this case, by a preponderance of the evidence, either that waste would be reduced or eliminated or that correlative rights of the owners in the Jalmat Pool would be protected to a greater degree by the inclusion of deliverability in said proration formula. The burden of proof so assumed by Texas Pacific Coal & Oil Company was not discharged by Applicant.

(Exhibit "D")

(i) Order No. R-1092-A results in irreparable injury to the correlative rights of Applicant and deprives this Applicant of its property without due process of law in this, that, it will permit production by offset operators of natural gas underlying the tracts woned by this Applicant without affording compensating counter-drainage from other adjoining tracts, and will prevent the Applicant from producing the recoverable gas in place in the Jalmat Pool underlying the tract upon which the wells of Applicant are located.

(j) Applicant has, since the entry of Order No. 520 in Case No. 1327, completed wells and reworked wells in the Jalmat Field in reliance upon said order and because allowables were based on a 100% acreage favor, no effort was made to obtain the greatest possible degree of deliverability. Applicant, therefore, alleges that Order No. R-1092-A is invalid because it results in a gross inequity to this Applicant and that the Commission cannot in good conscience deprive this Applicant of its property by drastically changing the allowable basis after the expenditure of considerable sums of money in reliance on the basis set out in Order No. 520.

WHEREFORE, Applicant respectfully prays the Commission that a rehearing be granted in the above styled and numbered case as to that portion of the Order and Decision of the Commission providing for the inclusion of a deliverability factor in the

(Exhibit "D")

allocation formula of the Jalmat Gas Pool subsequent to July 1, 1958.

STANDARD OIL COMPANY OF TEXAS

By: /s/ C. W. Proctor
C. W. Proctor

A copy of this application has been served on Texas and Pacific Coal and Oil Company by registered mail.

AND, THEREAFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,219, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7 and 10.
2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid."
3. It denies the allegations of Paragraphs 6(a) through 6(j), including all legal conclusions set forth therein.
4. It denies the allegation in Paragraph 8 that the Orders complained of are unlawful, unreasonable, arbitrary and capricious and, therefore, are invalid and void. It admits that the testimony referred to in Paragraph 8 was excluded, but in this connection states that said testimony is neither relevant nor material to the issues before the Commission in Case No. 1327.
5. It denies the allegations of Paragraph 9 and specifically denies that the Petitioner may, without limitation, introduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New Mexico

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,219, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
 Campbell & Russell
 P. O. Box 721
 Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
 certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,219, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By /s/ Manuel A. Sanchez

Attorneys for the above named respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,219, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7 and 10.

2. It denies the general allegations of Paragraph 6 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and were beyond the power of the Commission to enter and were invalid".

3. It denies the allegations of Paragraphs 6(a) through 6(j), including all legal conclusions set forth therein.

4. It admits that certain testimony referred to in Paragraph 8 was excluded by the Commission, but states that such testimony was properly excluded, as it was neither relative nor material in Case No. 1327.

5. It denies the allegations of Paragraph 9 and specifically denies that the Petitioner may, without limitation, introduce evidence before the Court upon trial of this cause.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders Nos. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

BY: /s/ A. L. Grambling

COWAN & LEACH
Hobbs, New Mexico

BY: /s/ Ray C. Cowan
Attorneys for Respondent,
El Paso Natural Gas Company

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,219, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY,
Respondent

By /s/ Robert W. Ward
Attorney for Respondent

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin Pipeline
Company, Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,219, instruments identical in words and figures to those filed in Cause No. 16,213 as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sept. 9, 1958	50
Petitioners' Offer of Proof	Sept. 15, 1958	65
Statement of the Case	Sept. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sept. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sept. 3, 1959	99

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al	Jan. 18, 1960	100
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Praecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, BE IT REMEMBERED, That on the 13th day of May 1958, there was filed in the office of said Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Lea, in Cause No. 16,220 on the Civil Docket of said Court, wherein HUMBLE OIL & REFINING COMPANY is Petitioner (concerning the same Orders of and Case before the Oil Conservation Commission of the State of New Mexico as referred to in Cause No. 16,213 hereinbefore set forth), in words and figures as follow, to-wit: a

PETITION FOR REVIEW

Comes now Humble Oil & Refining Company and for its petition for review of the action of the Oil Conservation Commission of the State of New Mexico in the above styled and numbered case and in the above Orders, alleges and states:

1. Petitioner is a corporation duly admitted to do business in the State of New Mexico, and is the owner of natural gas wells situate within the exterior boundaries of the Jalmat Gas Pool located in Lea County, New Mexico.

2. On the 29th day of January, 1958, the Oil Conservation Commission of New Mexico entered its Order No. R-1092-A in Case No. 1327, on the docket of said Commission, changing the gas proration formula applicable to wells in the Jalmat Gas Pool, which formula had been promulgated by Order No. R-520 of the

Oil Conservation Commission entered in Case No. 673 on August 12, 1954. Petitioner was a party to Cause No. 1327 and was affected by Order No. R-1092-A entered therein. Petitioner duly filed an Application for Rehearing directed to said Order No. R-1092-A and after rehearing the Oil Conservation Commission, on the 25th day of April, 1958, promulgated its Order No. R-1092-C reaffirming and refusing to modify the provisions of Order No. R-1092-A. Petitioner was affected by and dissatisfied with the provisions of Order No. R-1092-C, and by this proceeding seeks review as provided by law of Orders Nos. R-1092-A and R-1092-C above referred to.

3. The Jalmat Gas Pool is located in Lea County, New Mexico. After extended hearings, the New Mexico Oil Conservation Commission entered on August 12, 1954, its Order No. R-520 in Case No. 673, a copy of which said Order No. R-520 is marked Exhibit "A", is filed with the Clerk of the District Court of Lea County simultaneously with the filing of this Petition for Review and by reference incorporated herein. Copies of said order are in the possession of all of the parties to this proceeding. Said Order instituted gas prorationing in the Jalmat Gas Pool effective January 1, 1955. The Order provided for the method of allocation of the allowable among the various wells in the Jalmat Gas Pool, and provided that such allocation should be based 100% upon the acreage dedicated to the particular well.

Said case was regularly advertised and heard, and all owners or operators or persons interested were afforded an opportunity to present their views with respect to the institution of prorationing and the allocation formula which was to be adopted for the distribution of production among the various wells in the Pool. No appeal was taken from Order No. R-520, which Order became effective and remained in full and controlling force and effect until the action of the New Mexico Oil Conservation Commission herein complained of.

4. Case No. 1327 came on to be heard before the Oil Conservation Commission of New Mexico on October 18, 1957, upon the application of Texas-Pacific Coal and Oil Company. A copy of said application is attached hereto as Exhibit "B". After hearings were held, the Commission on January 29, 1958, entered Order No. R-1092-A, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

By the terms and provisions of Order No. R-1092-A, the Commission denied the application insofar as it sought the termination of prorationing in the Jalmat Gas Pool In Lea County, New Mexico, but it did change the proration formula in said Pool from the formula set forth in Order No. R-520 which was based 100% upon acreage to a formula of 25% acreage and 75% acreage times deliverability.

5. Petitioner timely filed its application for rehearing before the Oil Conservation Commission of the State of New Mexico,

a copy of which application is attached hereto as Exhibit "D" and made a part hereof. The Oil Conservation Commission granted a rehearing in accordance with the provisions of order No. R-1092-B, a copy of which is attached hereto as Exhibit "E". After rehearing, the Oil Conservation Commission entered Order No. R-1092-C which found that the provisions of Order No. R-1092-A should remain in full force and effect. A copy of said Order No. R-1092-C is attached hereto as Exhibit "F" and made a part hereof.

6. The formula set forth in Order No. R-1092-A which introduces a deliverability factor into the proration formula is not a reasonable basis on which to allocate the production from the Jalmat Gas Pool among the gas wells in the pool in that it fails to recognize or protect the correlative rights of the owners and operators in the pool. The 100% acreage formula for the proration of gas better protects the correlative rights of the operators and owners in the pool. The inclusion of a deliverability factor in the proration formula would result in economic waste and would violate correlative rights including those of this petitioner. Petitioner will introduce evidence in support of the above allegations upon the trial of this cause.

7. Petitioner alleges that Orders Nos. R-1092-A and R-1092-C are unlawful and are contrary to the preponderance of the evidence and were beyond the power of the Commission to

enter and are invalid upon the following grounds, to-wit:

(a) The Oil Conservation Commission in its Finding No. 5 in Order No. R-1092-A found a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and recoverable gas in place under the tracts dedicated to the wells. This Finding was reaffirmed in Order No. R-1092-C, in the Commission's Finding No. 2 which was:

"(2) That after considering all the evidence presented at the original hearings and the rehearing in this case, the Commission reaffirms its finding that Texas Pacific Coal and Oil Company has proved by a preponderance of the evidence that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the recoverable gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in a more equitable allocation of the gas production in said pool than under the present gas proration formula."

Petitioner alleges that said finding of the Commission is contrary to the preponderance of the evidence introduced before the Commission and is invalid and void.

(b) The Order of the Commission is invalid in that even though it be assumed that it was proved by a preponderance by the evidence: "That there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", such a finding provides no basis authorized by the statutes of New Mexico for modification of the pre-existing acreage formula for allocation of gas produced from the Jalmat Gas Pool.

(c) The Commission used as a basis for its decision to include deliverability in the proration formula of the Jalmat Gas Pool, certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of Order No. R-1092-A found, (1) that the inclusion of a deliverability factor in the Jalmat Proration Formula would result in the production of a greater percentage of the pool allowable, and (2) that it would more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool. Neither of said considerations provides any legal basis upon which the Commission could allocate production from the Jalmat Gas Pool under the statutes of New Mexico. The consideration of such factors rendered the decision of the Commission based thereon invalid and void.

(d) The uncontradicted evidence before the Commission showed that inclusion of a deliverability factor in the proration formula would result in economic waste in that it would require the expenditure of large sums of money by this Petitioner and other operators in the Jalmat Gas Pool in efforts to increase the deliverability of gas wells in the pool in order to protect their correlative rights, although the ultimate recovery from the various tracts would not be appreciably increased thereby, and although efforts to increase the

deliverability of wells in the Jalmat Gas Pool could not prevent the violation of correlative rights which would result from the inclusion of a deliverability factor in the proration formula.

(e) The uncontradicted evidence before the Conservation Commission showed that there would be greater drainage across adjoining lease lines if the proration formula were amended to include a deliverability factor than there would be under the straight acreage formula. The evidence introduced by the applicant was directed only to drainage from area to area in the pool, and did not contradict the evidence offered by the Petitioner and other companies that there would be greater drainage across lease lines if the proration formula should be changed to include a deliverability factor.

(f) The evidence introduced before the Oil Conservation Commission showed that the inclusion of a deliverability factor in the proration formula as ordered by Order No. R-1092-A would result in irreparable injury to the correlative rights of Petitioner and would deprive Petitioner of its property without due process of law in that it would permit the production by offset operators of natural gas underlying tracts owned by Petitioner without affording compensating counter-drainage from other adjoining tracts, and would prevent Petitioner from producing the recoverable gas in place in the

Jalmat Gas Pool underlying the tracts upon which the wells of this Petitioner are located.

8. All of the matters alleged hereinabove were set forth in Petitioner's Application for Rehearing before the Oil Conservation Commission, as shown by Exhibit "D" attached hereto.

9. Texas-Pacific Coal and Oil Company was the applicant in Case No. 1327, and El Paso Natural Gas Company, Permian Basin Pipeline Company, and Southern Union Gas Company appeared in said case in support of the application, and the above companies together with the Oil Conservation Commission of New Mexico are named as respondents in this Petition in accordance with the statutes of New Mexico.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 19(b) Chapter 168 of the Laws of the State of New Mexico, 1949, Section 65-3-22(b), N.M.S.A. 1953, that:

1. Notice of this Petition for Review be served upon respondents in the manner provided for the service of summons in civil proceedings upon the adverse parties.
2. This petition be set for trial, and upon the hearing thereof that this Court review the action of the Oil Conservation Commission herein complained of.
3. This Court try this action de novo and determine the issues of fact and law presented herein.
4. This Court enter its order vacating Orders Nos. R-1092-A

and R-1092-C of the Commission hereinabove referred to.

5. This Court enter such other or further order in lieu of Orders Nos. R-1092-A and R-1092-C as the Court may determine to be proper.

NELSON JONES
CHARLES E. SHAVER
FRANK L. HEARD, JR.
P. O. Box 2180
Houston, Texas

/s/ Howard Bratton
HERVEY, DOW & HINKLE
P. O. Box 547
Roswell, New Mexico

Attorneys for Petitioner, Humble Oil
& Refining Company

E X H I B I T S

TO
HUMBLE OIL & REFINING COMPANY
PETITION FOR REVIEW
OF ACTION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

<u>Exhibit</u>	<u>See Page</u> <u>Volume I</u>
A	15
B	16
C	21
D*	
E	37
F	39

** *** **

(*For Exhibit D
see next page.)

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF THE STATE OF NEW
MEXICO FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 1327
Order No. R-1092-A

APPLICATION OF TEXAS PACIFIC COAL &
OIL COMPANY FOR AN ORDER IMMEDIATELY
TERMINATING GAS PRORATIONING IN THE
JALMAT GAS POOL; OR IN THE ALTERNATIVE,
REVISING THE SPECIAL RULES AND REGULATIONS
FOR THE JALMAT GAS POOL IN LEA COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes now Humble Oil & Refining Company and requests a rehearing in the above case with respect to the matters hereinafter referred to which were determined by Order No. R-1092-A of the New Mexico Oil Conservation Commission in connection with the above styled case, and in support thereof respectfully shows:

I.

Applicant owns and operates oil and gas leases and gas wells within the Jalmat Gas Pool in Lea County, New Mexico. Applicant is affected by Order No. R-1092-A, which was entered by the Commission under date of January 29, 1958.

EXHIBIT "D"

II.

Order No. R-1092-A contains two findings, Nos. 5 and 6, which are the basis upon which Finding No. 7 as to deliverability is made, and upon which said Order amends previous orders of the Commission to include a deliverability factor in the proration formula. Paragraph 2 of Order No. R-1092-A amends all orders previously issued by the Commission to provide for an "acreage factor" for allowable purposes. Paragraph 3 of Order No. R-1092-A provides that Order No. R-520 as amended by Order No. R-967 be revised effective July 1, 1958, to include a deliverability factor in the gas proration formula of the Jalmat Gas Pool. Said paragraph provides for the deliverability factor and sets forth how it shall be carried into effect.

III.

Applicant alleges that the Commission is without jurisdiction or authority, and is estopped in equity and justice to entertain the application of Texas Pacific Coal & Oil Company in regard to the above matters in Order No. R-1092-A, and that Texas Pacific Coal & Oil Company was estopped to apply for an amendment to the proration formula for the Jalmat Gas Pool, and that if the Commission does have jurisdiction and there was no estoppel, the said order, in regard to the above matters, is discriminatory, erroneous, illegal and invalid, and a rehearing is requested in respect to said matters. In support thereof,

(Exhibit "D")

Applicant states:

1. The application of Texas Pacific Coal & Oil Company in case No. 1327, to the extent that it sought the inclusion of a deliverability factor in the proration formula of the Jalmat Gas Pool constituted a collateral attack upon Order No. 520 in Case No. 673 of this Commission, entered on the 12th day of August 1954, and the Commission was without jurisdiction to entertain said application, and said application cannot be made the basis of a valid order in Case No. 1327 insofar as the changing of the basis for allocation of production from the Jalmat Gas Pool from a 100% acreage basis to include a deliverability factor in the proration formula.

2. Order No. K-520 entered by this Commission in Case No. 673 constituted a final decision that the proration formula for the Jalmat Gas Pool should be on a 100% acreage basis. No appeal was taken from the final decision of the Commission so ordered, and the Commission cannot now on the basis of the application and record in this cause enter a valid order changing the basis for the allocation of production from the Jalmat Gas Pool.

3. Texas Pacific Coal & Oil Company, the applicant in Case No. 1327, was a participant in Case No. 673, and in said case supported the inclusion of deliverability in the proration formula, which request was considered by the Commission and denied

(Exhibit "D")

therein. No appeal was taken by Texas Pacific Coal & Oil Company from the final decision of the Commission so ordered and said company is now estopped to request a change in the proration formula for the Jalmat Gas Pool. On the basis of the record in this case, the Commission is without authority to revise, modify or change Order No. R-520 to now provide that the proration formula for the Jalmat Gas Pool shall include a deliverability factor.

4. Order No. R-1092-A is invalid and discriminatory and deprives the owners of properties in the Jalmat Gas Pool of their property without due process of law in that the owners of interest in said gas pool have acted in reliance on Order No. R-520 and have expended substantial sums of money on their properties in the Jalmat Gas Pool after the issuance of said Order, and have vested property rights therein, which property rights will be impaired by the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool.

5. As a result of the aforesaid expenditures and other actions by the owners in the Jalmat Gas Pool in good faith in reliance upon the existing proration rules in Order No. R-520 the Commission is as a matter of equity and justice estopped from amending said proration order to include a deliverability factor which amendment would discriminate against owners who have acted in reliance upon the existing proration formula.

(Exhibit "D")

6. Finding No. 5 in Order No. R-1092-A is:

"That the Applicant has proved that there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells, and that the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool would, therefore, result in more equitable allocation of the gas production in said pool than under the present gas proration formula."

Applicant alleges that this finding is contrary to, and wholly without support in the evidence and is therefore erroneous and invalid. In further support of the grounds here alleged, there is attached hereto as Exhibit "A" a vertical bar graph depicting the relationship between the recoverable gas in place under the 58 tracts which were the subject of testimony and exhibits presented by this applicant and other operators before the Commission on December 9, 1957, and the deliverability of the 58 gas wells located on said tracts. Said exhibit is based upon the testimony and the record in this case and clearly demonstrates the total absence of correlation between the deliverabilities of gas wells in the Jalmat Gas Pool and gas in place under the tracts dedicated to said wells. If afforded an opportunity to do so, applicant will present further evidence in this regard but asserts that on the evidence heard by the Commission it is clearly shown that no such correlation exists, and that therefore the entire Finding No. 5 is erroneous and invalid.

7. Even though it is assumed that it has been proved as

(Exhibit "D")

stated in Finding No. 5 that "there is a general correlation between the deliverabilities of the gas wells in the Jalmat Gas Pool and the gas in place under the tracts dedicated to said wells", said Finding provides no basis authorized by the statutes of New Mexico for modification of the formula prescribed by Order No. R-520 for the proration of gas produced from the Jalmat Gas Pool.

8. The Commission has used as a basis for its decision to include deliverability in the proration formula certain factors which are not contemplated or permitted by the statutes of New Mexico in the determination of a proration formula for a gas pool. Finding No. 6 of said Order No. R-1092-A is:

"That the inclusion of a deliverability factor in the proration formula for the Jalmat Gas Pool will result in the production of a greater percentage of the pool allowable, and that it will more nearly enable various gas purchasers in the Jalmat Gas Pool to meet the market demand for gas from said pool."

Neither of said considerations provides any legal basis for the allocation of production among the gas wells in a gas pool.

9. Order No. R-1092-A will result in underground waste since many wells in the Jalmat Gas Pool are old wells and the condition of many of such wells is such that the action required of a prudent operator under Order No. R-1092-A will necessarily result in the underground waste of natural gas.

10. Order No. R-1092-A will result in economic waste in that it will require the expenditure of a large sum of money by

(Exhibit "D")

this applicant to increase the deliverability of its gas wells in an effort to protect its correlative rights, although the ultimate recovery from the tracts owned by this applicant will not be appreciably increased thereby, and although efforts of operators to increase the deliverability of wells in the Jalmat Gas Pool cannot prevent the violation of correlative rights which will result from the inclusion of a deliverability factor in the proration formula.

11. Order No. R-1092-A is invalid in that the burden of proof was upon the applicant in this case, by a preponderance of the evidence, to show a valid reason on a ground authorized by the statutes of New Mexico for the inclusion of deliverability in the proration formula for the Jalmat Gas Pool, and the applicant did not sustain this burden of proof.

12. Order No. R-1092-A results in irreparable injury to the property rights of applicant and to its correlative rights in that it permits drainage from under tracts in the Jalmat Gas Pool owned by this applicant, which drainage is not equalized by counter drainage. This deprives applicant of its property without due process of law in violation of Amendment 14 of the Constitution of the United States and Article II, Section 18 of the Constitution of the State of New Mexico.

WHEREFORE, Applicant respectfully requests the Commission that a rehearing be granted in the above case as to those portions

(Exhibit "D")

of Order No. R-1092-A which amend the previous orders of the Commission to provide for the inclusion of a deliverability factor in the allocation formula of the Jalmat Gas Pool subsequent to July 1, 1958, and that after rehearing the Commission rescind its order in the above respects, and retain the proration formula established by Order No. R-520.

HUMBLE OIL & REFINING COMPANY

By /s/ Howard C. Bratton
Hervey, Dow & Hinkle
P. O. Box 547
Roswell, New Mexico

AND, THERE AFTER, to-wit: On the 12th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,220, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, Oil Conservation Commission of New Mexico, and for its response to the Petition for Review, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 8 and 9.
2. It denies the allegations of Paragraph 6 and it further denies that the Petitioner may, without limitation, introduce evidence before the Court.
3. It denies the general allegations of Paragraph 7 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are contrary to the evidence, and were beyond the power of the Commission to enter and were invalid."
4. It denies the allegations of Paragraphs 7(a) through 7(f), including all legal conclusions set forth therein.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders No. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as it may determine to be proper.

/s/ William J. Cooley

/s/ Oliver E. Payne

Attorneys for Respondent, Oil
Conservation Commission of New
Mexico.

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 13th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,220, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent, Texas Pacific Coal and Oil Company, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the Oil Conservation Commission of New Mexico as its Response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

TEXAS PACIFIC COAL AND OIL COMPANY

By: /s/ Jack M. Campbell
 Campbell & Russell
 P. O. Box 721
 Roswell, New Mexico

Attorneys for Respondent

(Service of pleading
 certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,220, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now the respondent Southern Union Gas Company, a foreign corporation, pursuant to Rule 10(c) of the Rules of Civil Procedure, and hereby adopts the Response herein filed on behalf of the respondent Oil Conservation Commission of New Mexico as its response, in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

WILLIS L. LEA, JR., and A. S. GRENIER
Burt Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By /s/ Manuel A. Sanchez

Attorneys for the above named respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,220, in words and figures as follow, to-wit: a

RESPONSE TO PETITION FOR REVIEW

Comes now Respondent, El Paso Natural Gas Company, a Delaware corporation, and for its response to the Petition for Review herein, states:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 8 and 9.
2. It denies the allegations of Paragraph 6 and it further denies that the Petitioner may, without limitation, introduce evidence before the Court.
3. It denies the general allegations of Paragraph 7 that the Orders complained of are "unreasonable, unlawful, capricious and arbitrary and are contrary to the evidence, and were beyond the power of the Commission to enter and were invalid."
4. It denies the allegations of Paragraphs 7(a) through 7(f), including all legal conclusions set forth therein.

WHEREFORE, Respondent prays the Court:

1. That the Petition for Review be dismissed.
2. That Orders Nos. R-1092-A and R-1092-C of the Commission be affirmed.
3. That the Court enter such Order, or further Orders, as

it may determine to be proper.

HARDIE, GRAMBLING, SIMS & GALATZAN
P. O. Box 153 - El Paso, Texas

BY: /s/ A. L. Grambling

COWAN AND LEACH
Hobbs, New Mexico

BY: /s/ Ray C. Cowan
Attorneys for Respondent,
El Paso Natural Gas Company

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the 16th day of June 1958, there was filed in the office of said Clerk, in said Cause No. 16,220, in words and figures as follow, to-wit: a

RESPONSE

Comes now Respondent Permian Basin Pipeline Company, and, pursuant to Rule 10(c) of the Rules of Civil Procedure, hereby adopts the response herein filed on behalf of the Oil Conservation Commission of New Mexico as its response in the same manner and to the same extent as though each paragraph thereof was herein fully set out.

PERMIAN BASIN PIPELINE COMPANY
Respondent

By /s/ Robert W. Ward

Robert W. Ward
201 North Love
Lovington, New Mexico

Lawrence I. Shaw
F. Vinson Roach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

(Service of pleading
certified to.)

AND, THEREAFTER, to-wit: On the dates set forth below, there was filed in the office of said Clerk, in said Cause No. 16,220, instruments identical in words and figures to those filed in Cause No. 16,213 as follow, to-wit:

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Motion for Pre-Trial Conference	July 3, 1958	48
Minutes - Pre-Trial Conference	Sept. 9, 1958	50
Petitioners' Offer of Proof	Sept. 15, 1958	65
Statement of the Case	Sept. 23, 1958	70
Petitioners' Supplemental Offer of Proof	Sept. 23, 1958	80
Motion	June 12, 1959	82
Order	June 12, 1959	83
Stipulation	June 26, 1959	85
Respondents' Offer of Proof	June 26, 1959	86
Requested Findings of Fact and Conclusions of Law	Aug. 21, 1959	89
Motion	Aug. 27, 1959	94
Order	Aug. 27, 1959	95
Certificate	Aug. 28, 1959	96
Motion	Aug. 31, 1959	97
Order	Aug. 31, 1959	98
Certificate	Sept. 3, 1959	99

<u>Instrument</u>	<u>Date Filed</u>	<u>Set Forth in Vol. I Page</u>
Requested Findings of Fact and Conclusions of Law of Petitioners Continental Oil Company, et al	Jan. 18, 1960	100
Decision of the Court	Feb. 17, 1960	115
Judgment	Feb. 17, 1960	120
Motion for Allowance of Appeal	Mar. 14, 1960	121
Order Allowing Appeal	Mar. 14, 1960	122
Notice of Appeal	Mar. 14, 1960	123
Certificate	Mar. 14, 1960	124
Proof of Service	Mar. 22, 1960	125
Motion for Allowance of Cross-Appeal	Mar. 25, 1960	126
Order Granting Cross-Appeal	Mar. 25, 1960	127
Notice of Allowance of Cross-Appeal	Mar. 28, 1960	128
Stipulation	Apr. 12, 1960	130
Order	Apr. 12, 1960	133
Fraecipe	Apr. 12, 1960	135
Point Relied Upon by Cross-Appellant	Apr. 21, 1960	137

** *** **

AND, WHEREAS, to-wit: on the 11th day of June 1960, there was filed in the office of said Clerk, in said Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, Consolidated, in words and figures as follow, to-wit: *

LETTER FOR EXHIBIT TO THE
WITHIN WHICH TO FILE TRANSCRIPT OF
THE RECORD AND DOCKET THEREIN

That the Continental Oil Company, et al, Petitioners in the District Court and Appellants to the Supreme Court of New Mexico in the appeals consolidated as Cause No. 16213 on the docket of this Court and Oil Conservation Commission of New Mexico, Respondent and Cross-Appellant therein, and move the Court for an extension to August 16, 1960, of the time within which to file the transcript of the record and docket the appeal and the cross-appeal in the above entitled and numbered cause in the Supreme Court of New Mexico, and as grounds therefor state that additional time is required for the completion of the transcript of the record which is not yet ready for filing.

WHEREFORE, the above named parties pray that the Court enter its order granting an extension of time to August 16, 1960, in which to file the transcript of the record and docket the appeal and cross-appeal in this case in the Supreme Court of New Mexico.

ILLEGIBLE

Continental Oil Company
Osoe, New Mexico

REPLACES ONE FOR

By: /s/ Jason M. Kallahan
Santa Fe, New Mexico

ATTORNEY & COUNSEL

By: /s/ Ross L. Hauser
Roswell Petroleum Building
Roswell, New Mexico

Attorneys for Petitioners and
Appellants

/s/ Oliver S. Payne
Oliver S. Payne
Special Assistant Attorney General
P. O. Box 971
Santa Fe, New Mexico

Attorney for Respondent and Cross-
Appellant Oil Conservation Commission

(Service on all Counsel of
Record certified to.)

ILLEGIBLE

AND, WHEREAS, to-wit: on the 12th day of June 1960, there was filed in the office of said Clerk, in said Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, consolidated, in words and figures as follow, to-wit: as

CAUSE NO. 16213-16220
WITHIN WHICH TO FILE TRANSCRIPT ON
APPEAL AND CROSS-APPEAL

Upon consideration of the Motion for Extension of Time Within Which to File Transcript on Appeal and Cross-Appeal filed herein by Continental Oil Company, et al, Appellants, and Oil Conservation Commission of New Mexico, Cross-Appellant.

IT IS ORDERED that an extension of time to August 15, 1960, be, and it hereby is, granted within which to file the transcript of the record and to docket the appeal and cross-appeal in the above entitled and numbered consolidated cases.

/s/ JOHN A. STARR
District Judge

ILLEGIBLE

AND, THEREAFTER, to-wit: on the 2 day of August, 1960, there was filed in the office of said Clerk, in said Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, Consolidated, in words and figures as follow, to-wit: a

WAIVER OF NOTICE

CORPUS NOV Respondent, Oil Conservation Commission of New Mexico, by its attorney, Oliver E. Payne, and hereby waives the usual five days' notice of intention to apply for an Order signing and Sealing the Bill of Exceptions herein, and consents that the same may be entered at any time within return date when presented by the attorneys for the Petitioners.

/s/ Oliver E. Payne
OLIVER E. PAYNE
Special Assistant Attorney General
Rm. 301 Box 871
Santa Fe, New Mexico

Attorney for Respondent Oil
Conservation Commission of New Mexico

ILLEGIBLE

AND, THEREAFTER, to-wit: on the 2 day of August, 1960, there was filed in the office of said Clerk, in said Cause Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, Consolidated, in words and figures as follow, to-wit: a

WAIVER OF NOTICE

CHAS. H. Respondent, El Paso Natural Gas Company, by its attorneys, Hardie, Granblin, Sims & Galatzer and by Ray C. Cowan, and hereby waives the usual five days' notice of intention to apply for an Order Signing and sealing the Bill of Exceptions herein, and consents that the same may be entered at any time within return date when presented by the attorneys for the Petitioners.

HARDIE, GRANBLIN, SIMS & GALATZER
P. O. Box 133 - El Paso, Texas

/s/ RAY C. COWAN
RAY C. COWAN, Hobbs, New Mexico

Attorneys for Respondent
El Paso Natural Gas Company

ILLEGIBLE

AND, THEREAFTER, to-wit: on the 2 day of August,
1960, there was filed in the office of said Clerk, in said Causes
Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, Con-
solidated, in words and figures as follow, to-wit: a

WAIVER OF NOTICE

Trans Pacific Coal and Oil Company,
by its attorneys, Campbell & Russell, and hereby waives the usual
five days' notice of intention to apply for an Order Signing and
Sealing the Bill of Exceptions herein, and consents that the same
may be entered at any time within return date when presented by
the attorneys for the Petitioners.

TRANS PACIFIC COAL AND OIL COMPANY

By: Jack H. Campbell
Campbell & Russell
P. O. Box 721
Roswell, New Mexico
Attorneys for Respondent

ILLEGIBLE

AND, THEREAFTER, to-wit: on the 2 day of August, 1960, there was filed in the office of said Clerk, in said Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219, and 16220, Consolidated, in words and figures as follow, to-wit: a

WAIVER OF NOTICE

CORSA Gas Respondent, Southern Union Gas Company, by its attorneys, Willis L. Lee, Jr. and A. S. Gresham and by Manuel A. Sanchez, and hereby waives the usual five days' notice of intention to apply for an order signing and sealing the Bill of exceptions herein, and consents that the same may be entered at any time within return date when presented by the attorneys for the Petitioners.

WILLIS L. LEE, JR., and A. S. GRESHAM
Bart Building, Dallas, Texas

MANUEL A. SANCHEZ
Santa Fe, New Mexico

By: Manuel A. Sanchez

Attorneys for the above named respondent

ILLEGIBLE

AND, THEREAFTER, to-wit: On the 2 day of August, 1960, there was filed in the office of said Court, in said Cause Nos. 18213, 18214, 18215, 18217, 18218, 18219 and 18220, Consolidated, in words and figures as follow, to-wit: a

Waiver of Notice

LEAS Now Respondent, Permian Basin Pipeline Company, by its attorney, Robert W. Ward, and hereby waives the usual five days' notice of intention to apply for an Order signing and sealing the Bill of Exceptions herein, and consents that the same may be entered at any time within return date when presented by the attorneys for the Petitioners.

PERMIAN BASIN PIPELINE COMPANY
Respondent

By: /s/ Robert W. Ward
attorney for Respondent

Robert W. Ward
201 North Love
Lexington, New Mexico

Lawrence I. Shaw
E. Vinson Beach
Patrick J. McCarthy
2223 Dodge Street
Omaha 1, Nebraska

Attorneys for Permian Basin
Pipeline Company, Respondent

ILLEGIBLE

AND, THEREAFTER, to-wit: on the 2 day of August, 1960, there was filed in the office of said Clerk, in said Causes Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, Consolidated, in words and figures as follow, to-wit: e

WAIVER OF NOTICE

That the Petitioners by their attorneys, Harvey, Dow & Hinkle, Kellighin & Fox and Atwood & Malone, and hereby waive the usual five days' notice of intention to apply for an Order signing and Sealing the Bill of Exceptions herein, and consent that the same may be entered at any time within return date when presented by the attorneys for Cross-Appellant.

HARVEY, DOW & HINKLE
P. O. Box 347
Roswell, New Mexico

KELLY & FOX
P. O. Box 1713
Roswell, New Mexico

ATWOOD & MALONE

By /s/ Ross E. Malone
P. O. Box 347
Roswell, New Mexico

ILLEGIBLE

AND, THEREAFTER, ON THE 2 day of August, 1960, there was filed in the office of said Clerk, in said Causes Consolidated, Nos. 16213, 16214, 16215, 16217, 16218, 16219 and 16220, a

TRANSCRIPT OF THE TESTIMONY AND EXHIBITS

AND THEREAFTER, on the 2 day of August, 1960, the said Transcript was by the Judge of said Court, duly certified, signed and sealed as a

BILL OF EXCEPTIONS

in said causes, and as such Bill of Exceptions was subsequently on the 2 day of August, 1960, refiled in the office of said Clerk as such, and as so signed, certified and sealed, is in words and figures as follows, to-wit:

TRANSCRIPT OF RECORD, EXHIBIT II
AND EXHIBITS REFERRED TO THEREIN

BY _____

ILLEGIBLE