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BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
August 15, 1962

IN THE MATTER OF:)

Application of El Paso Natural Gas)
Company for a revision of Rule 314.)
Applicant, in the above-styled cause,)
seeks the revision of Rule 314 pertain-)
ing to the gathering, transporting and)
sale of drip to provide for the re-)
definition of drip also to include con-)
densate; to further regulate the trans-)
portation of drip, as redefined; and to)
require the reporting of such transpor-)
tation on Forms C-110-A and C-110-B.)

Case 2618

BEFORE: Honorable Edwin L. Mechem
Mr. A. L. "Pete" Porter
Mr. E. S. "Johnny" Walker

TRANSCRIPT OF HEARING

MR. PORTER: The meeting will come to order. We'll take
up Case 2618.

MR. PAYNE: Application of El Paso Natural Gas Company
for a revision of Rule 314.

MR. WHITWORTH: Garrett Whitworth, Ben Howell and the
Santa Fe law firm of Seth, Montgomery, Federici and Andrews,
representing El Paso Natural Gas Company.

MR. PORTER: Do we have any other appearances in this case?



MR. KELLY: Booker Kelly of Gilbert, White & Gilbert, representing Reagin Trucking Company and Phillips Petroleum Company.

MR. HENSLEY: Mr. Commissioner, Harold Hensley of Hervey, Dow & Hinkle representing Humble Oil & Refining Company.

MR. PORTER: Anyone else desire to make an appearance? We also brought this case on in Hobbs last May. There was some discussion and some testimony put into the record. The Commission decided to designate El Paso Natural Gas Company as a clearing house for ideas which anybody wanted to submit concerning the revision of Rule 314, the handling of drip and condensate, and I know that some suggestions were offered and meetings held in Albuquerque, I know. So, at this time we will recognize Mr. Garrett Whitworth of El Paso.

MR. PAYNE: Do you want to stand and be sworn, Mr. Rainey?

MR. RAINEY: Yes, sir.

(Witness sworn.)

MR. WHITWORTH: In conformance with the suggestion of the Commission at the Hobbs hearing that a record of that hearing be incorporated and made a part of this hearing, at this time El Paso requests that the record of the previous hearing be incorporated and made a part of this hearing today.

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MR. PORTER: Any objection to the motion? The record of the previous hearing will be made a part of this hearing.

DAVID RAINEY

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WHITWORTH:

Q Will you state your full name and by whom and in what capacity you are employed?

A David Rainey, Chief Assistant in the Proration Department of the El Paso Natural Gas Company.

Q You have previously testified before this Commission on a number of occasions and your qualifications have been made a matter of record?

A Yes, sir.

Q Would you outline to the Commission what has been done on this matter of revising Rule 314 since the Hobbs hearing?

A Yes, sir, in accordance with the Commission directive, at the end of that hearing, El Paso had waited for approximately three weeks for suggestions and notifications from operators who were interested in the matter, and at that time we called a meeting for June 27 in Albuquerque, sent out notice to some, oh, twenty-five operators, trucking companies and individuals, some



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of whom had specifically indicated an interest in the matter and requested that they be permitted to make suggestions and attend any meeting that we had; others we just added to the list because of our knowledge of the drip and condensate that those operators produced in the State of New Mexico. That June 27 meeting in Albuquerque we went over the original proposals and some suggested changes to the original proposals, and attempted to come up with a workable solution to the difficulties that had been raised by various parties at the May hearing in Hobbs.

We then set a ten-day period for further written suggestions, and after that ten-day period had elapsed, El Paso attempted to rephrase the rules and the forms and redesign the forms so that they would meet the suggestions of the operators that had attended the hearing.

We had another meeting on July 24 in Albuquerque, at which time additional suggestions and changes were suggested, and we then from that came up with what we thought was the composite suggestions and the meeting of the minds of the people that attended those meetings and had sent in written suggestions and have presented at this hearing those suggestions, and they are attached to the docket for today, both the proposed new rules and the proposed forms.

Q Mr. Rainey, would you take the proposed new Rule 314



that has been attached to the application and explain it to the Commission?

A Yes, sir. We first felt it was necessary to redefine drip from the old definition in existing Rule 314 to include condensate within the scope of that definition so that all of the products incidental to the production of gas in the State of New Mexico are included in the definition of drip.

Now, in other words, both condensate and the so-called drip which accumulates in the gathering lines of gathering systems. So that is a change from the old definition of drip.

Paragraph (b) is exactly the same as paragraph (b) of the existing rule. Paragraphs (c) and (d) are reworded sections, but which provide for the same things as are provided for in the current paragraphs (c), (d) and (e) of the existing 314. As I say, the wording has been changed, but the meaning is the same.

Now, paragraph (e) is a completely new paragraph to provide for the filing of certain forms before drip can be transported. I believe it might be well to read through those hurriedly and comment somewhat about the purpose of it. "The owner during transportation and all persons transporting drip by truck or other vehicle shall make report of such transportation on Commission Form C-110-A." That's a new Commission form which I'll discuss in a moment. "When the owner is also the transporter, the owner

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shall complete Sections I and II of the Form, furnish one copy to the driver of the vehicle and, when the trip has been completed, file one completed copy with the Commission. When the owner is not the transporter, the owner shall complete Section I of Form C-110-A and deliver the Form to the transporter, who shall complete Section II of Form C-110-A and furnish the driver of the vehicle with one copy and, when the trip has been completed, file one completed copy with the Commission. The driver of the vehicle shall complete Section III of Form C-110-A. The person driving or operating a vehicle transporting drip shall have in his possession a copy of Form C-110-A signed by the owner and transporter, or an authorized agent, in the appropriate Section thereof, showing the name and address of the owner, the source and destination of the drip, the name and address of the owner of the vehicle, type of vehicle, license number of vehicle, name and address of driver of vehicle, quantity of drip transported, and date and time and places loaded.

If the owner of said drip is not the producer thereof, each and every operator of such truck or other vehicle shall have in his possession, in addition to the above requirements, a completed copy of Commission Form C-110-B, signed and certified by the producer and the purchaser of said drip, or their agents, in the appropriate Section thereof, showing the name and address



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of the producer, the name and address of the purchaser, the source of the drip and the expiration date of the authority of the purchaser to transport drip from the producer's system or other facility."

It has been suggested this morning that the wording of the remainder of that paragraph be changed somewhat to clarify it a little bit. I will read the proposed wording, which I believe does clarify it. "The producer and the purchaser, or purchasers, shall each retain one completed copy of C-110-B, and the purchaser, or purchasers, shall file one completed copy thereof with the New Mexico Oil Conservation Commission and make one completed copy available to each vehicle driver having need thereof, and such other copies as the purchaser or producer may find necessary." In other words, that was to provide that there shall be a certain number of specified copies that must be made of that, and if it's necessary for the producer or purchasers to have additional copies for some of their records, they can make any additional copies they may deem appropriate.

Now, paragraph (f) is actually the same as the old paragraph (h) in the existing rule. We've changed no wording there. That's the paragraph that provides that each gas transporter shall file a map of their system showing the drips and gathering points on that system once a year with the Commission.



When we turn to Form C-110-A, unless there are questions in regard to the rules, we have one or two typographical errors at the outset on that. After No. 1 in Section I, we have got a little "a", "produced by owner", and then we have "purchased from producer"; there should be a little "b" put in front of "purchased from producer", because we say in an explanation right before that if little "b" is checked, why you have to attach a copy of C-110-B.

Q That is on the copy that was attached to the application?

A That is correct. It's not on the Commission's copy that's attached to the copy for today's hearing.

Q But it is on the copy attached to the application.

A Okay, fine.

Q Proceed.

A Section I, we propose that the owner of the drip shall fill out and sign. Now, the question has been raised that in many instances the owner or the producer may desire to specifically identify and number the tickets so that he can keep track for purposes of his records of what load we are talking about. For that purpose this producer's identification number is placed at the top of this form in the upper left-hand corner. The ticket number is a number which will be numbered in sequence



as it was visualized by the committee or the group that met, so that there can be a running sequential record kept of the tickets that ~~were~~ used by various truckers or trucking firms.

Now, I might point out at this time that there was considerable question raised as to the desirability of a specific trip ticket which had to be signed by the owner, and the point was brought out that many times it's virtually impossible for the owner to present personally to a trucker each time each individual trip is made a trip ticket as we propose here. It was our visualization, and I think agreed upon by the operators that met together on this, that where a producer or an owner of drip has a contract trucker that hauls his drip for him regularly, that it would probably be feasible and desirable if he furnished that trucker a stack of these trip tickets, the owner would keep a record of the numbers of the tickets that he had issued to a particular trucker, and then at the time that he wanted a particular load picked up from a series of tanks on a series of drips he would phone the trucker and say "by my ticket number so and so, go out and pick up the drip from a series of tanks in such and such a part of the field." The trucker would then fill in Section, I mean line 4 of Section II, "Name of owners agent ordering trip" at that time, and the owner and the trucker then would have a check on who had authorized the specific trip and the owner

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at that time could furnish the trucker with any specific number, identification number that he wanted to put on these tickets so that he could keep a check in his records, and that any inspecting officer, if he needed to check or suspected that the ticket was not all proper, could then contact this owners agent and determine whether or not this trucker was authorized by a certain ticket number to go pick up a certain load of drip.

Going then to the remainder of Section II, it would be filled out by the truck owner, the trucking company, and given to the driver at the time that this driver is to make the pickup as authorized by telephone call, or if the owner specifically wants to issue an individual ticket for each load, why then it can be filled out by the trucker after he gets a copy of the ticket.

Section III will then be filled out by the driver. He's the only one who will know at that time how much drip he has picked up from what sources, and he fills it out and any time a driver has a loaded truck he should have at least a portion of this Section III filled out.

Now, he may be picking it up from several sets of tanks. He may have a partial load from one tank and pick up another partial load from another set of tanks and still another part of the load from a third set of tanks. Any time he has any product in his truck he should have at least a portion of Section III



filled out, and at the time that he's hauling to some central delivery point for the owner as specified in Section I, he should have the entire section filled out and have it signed by himself, in other words, the driver.

Q As contemplated by the rule, a completed Form C-110-A should be in the possession of the driver of every load of drip, as defined?

A Yes, sir, that's true. As I say, it may not be completed at a particular stage of his journey, if he's still in the field picking up drip he may have only a partial load and may be going elsewhere to pick up more drip as authorized by the owner thereof. But he will have at least some portion of Section III filled out any time he's got drip on that truck, or any product on that truck.

Q What is the purpose of proposed Form C-110-B?

A Form C-110-B, we would also like to make a correction on before we discuss it. We changed the name of producer and address of producer to owner. That, again, is something we thought we had covered, and it's been pointed out to me today that sometimes there are succeeding transactions where the actual producer of drip may make a contract with a particular trucking company to pick up the drip. That trucking company may in turn, on occasion before he ever picks it up, contract to some further



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trucker or some purchasing company to go directly to the field and pick up the drip. Consequently, there are times and occasions when the producer would not necessarily be the owner at the time that the drip was being picked up in the field. So in that event it would be necessary that two copies of this Form C-110-B be on the vehicle.

Now, C-110-B, I think, maybe I got partly into the explanation and explained why we changed from producer to owner. If the producer is not the owner at the time the drip is picked up, frequently contracts are made, as I understand it, to a trucking company and the producer sells the drip in the field in his tanks or in his drips so that when the drip is picked up the producer thereof is not actually the owner of it. This form is merely intended to show the transfer of ownership so that the authorization can be on the truck when the drip is being picked up. In other words, why is this truck on the XYZ Oil Company lease when this truck has no relationship to XYZ Oil Company? It's a contract trucker completely separate and apart from the XYZ Oil Company, and I believe that **is the most** explanation we can make.

We have had several suggested changes, as I say, this morning. El Paso is not specifically wedded to the wording or the form on this. At the time of our last meeting in Albuquerque we thought



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we had answered most of the questions that needed to be answered, but I find there are other questions this morning already. I might point out that basically the reason for the need of this was pointed out at the May hearing in Hobbs, and at that time I don't recall whether or not the penalty provision of the existing statutes were gone into, but the only penalties at the present time are relatively minor penalties and there's no provision, as I understand it, in the statutes for any inspecting officer to stop vehicles on the highway and check them to see whether they are hauling authorized products. They have to catch them in the act of stealing drip out of somebody's tank before they can prosecute.

Even in that case it's a relatively minor **fine**. Under the provision of the rules and the forms as we propose them here, there would be the statutory penalty of failure to comply with Commission rules and regulations and falsifying forms, which do provide as a maximum up to three years in the penitentiary and \$5,000 fine, which we feel puts a stiff penalty on the thing, and one or two violations which can be prosecuted will probably be a large deterrent to particularly the small thief that's just picking up a barrel or two at a time. If they can catch a few of those and prosecute one or two of them, it seems to us it would be a considerable deterrent to those people to stealing the



drip. I think it's probably recognized that a large portion of the theft is from small volume thefts rather than big tank truck lots of it.

Q We are asking only that the Commission prescribe the forms to be used and not furnish the form, is that true?

A That's correct. It would be our intention and the intention of the operators that met and discussed this that the Commission will prescribe a particular form somewhat similar to the 110-A, or exactly like the 110-A as proposed here, and then the operators would have made up their own copies of that form so they can imprint their own numbers, their own numeral series or sequence on those forms.

Q Mr. Rainey, are you familiar with trip tickets that are now being used by producers?

A Yes, sir. Specifically El Paso and Southern Union in the San Juan Basin use their own form of trip ticket or manifest or purchase order, or whatever you might want to call it. It has worked very well as far as keeping track of the drip from our contract truckers, knowing where it's going and when it's being picked up, and things of that kind.

The intention of asking that the Commission authorize a form and provide a form for this is merely for purposes of the penalty which may be attached if the form is falsified or not used.

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It's my understanding that virtually all trucking concerns have some form of manifest or trip ticket that is used on their trucks at the time they are hauling drip, or any other product for that matter, and this form could very readily be substituted for any other form that companies may be using at the present time.

Q The forms that we propose, are they similar to the forms that are now being used?

A In general they provide for essentially the same type of information. The format is somewhat different in some companies. I think each company has pretty well their own ideas as to what they need on the form, but it's our understanding, in discussing this with other companies and with trucking concerns, that this form, as proposed here, this C-110-A would fulfill the needs of all the companies involved in regard to a manifest or trip ticket or what have you.

MR. WHITWORTH: That completes the testimony of this witness.

MR. PORTER: Does anyone have any questions of Mr. Rainey? Mr. Nutter.

CROSS EXAMINATION

BY MR. NUTTER:

Q Mr. Rainey, at the meeting of the group which considered the adoption of a proposed rule and these forms which was held



at the Western Skies Motel in Albuquerque on July the 24th, consideration was given to the requirement in the rule that trucks be labeled or identified?

A Yes, sir.

Q What is the status of that insofar as El Paso's thinking is concerned?

A El Paso has no objection whatsoever to a Commission rule requiring that the truck be labeled. It was our understanding, and I have not personally checked it out, it was our understanding that the Commission attorney had some misgiving as to the authority of the Commission ordering such a thing being done, because of the ramifications with the Corporation Commission and their certification of certain trucking firms, and so forth.

Q El Paso, however, would not be adverse to the Commission giving consideration to the label system as long as it is not in conflict with the State Corporation Commission or the Gasoline Tax Division of the Bureau of Revenue?

A No, sir, we'd not only not object, but I think we'd think it would be a good thing to do if the Commission feels their authority extends that far.

Q If it could be worked out?

A Yes, sir.

Q Now, Mr. Rainey, I have here a copy of a Form C-110-A

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which has been proposed by one member of the staff of the Commission and includes a couple of minor changes. You'll note that in Section III, the portion which is to be filled out by the driver, that there is an item 2, "Load to be delivered to --"?

A Yes, sir.

Q And a specific destination and point of delivery would be indicated. Would El Paso be adverse to the inclusion of that line in that form?

A No, sir, I see no objection to that. A specific load could be directed to be delivered to a specific destination other than maybe the general destination which is set out in Section I or line 4 of Section I.

Q Then, in Section IV, this staff member has also included a Section IV in which the agent at the point of delivery would certify that the delivery had been made. In your opinion, is there anything seriously wrong with the inclusion of something along those lines?

A I personally have no objection to that, but it's my recollection that that matter was discussed at some length in one or another of the meetings that we had, and there was objection to it, as I recall, on the grounds that many times these deliveries are made to central tank batteries or central storage points of some kind and that the contract trucker, if such be

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the case, frequently will just go ahead and pump the stuff out of the truck into the receiving tanks and there may not even be anybody there at the receiving point to certify the thing, and that it would require sort of a liaison to be sure there was a man there, which some of the operators or some of the trucking concerns felt was unduly burdensome. As a result, it was not put on our original form. As I say, it was discussed and that point was raised. I personally have no objection to it, but it's my understanding that many of the trucking companies did not like it.

Q But in some instances Section IV can not be complete when it's a driver to a centralized battery out in the field?

A That's my understanding, yes, sir.

MR. NUTTER: That's all. Thank you.

MR. PORTER: Anyone else have a question of Mr. Rainey?

MR. PAYNE: Yes, sir.

MR. PORTER: Mr. Payne.

BY MR. PAYNE:

Q Even if you adopt these two forms, you are still going to have considerable policing problems in the field, are you not?

A That's true, there's no question about it. This will just put some teeth in the present problem of policing it. Right now they have to catch them in the act of stealing it before there's anything they can do about it. This way they can at least



check them on the highway and see if they have a legal load.

Q Did the study committee, due to this fact, consider the possibility of making the drip unusable for motor vehicle fuel by the addition of an additive of some sort?

A Yes, sir, that suggestion was made, and as I recall, there was some testimony in May and some discussion in the meetings that that has been tried from time to time. In one particular instance that I recall, and I don't know any of the particulars other than a general story, I don't know the operators or the farmer or who it was, but as I understand it, a farmer in the San Juan Basin area felt that one of the prerogatives that he had after leasing the land was to use whatever drip he might need in his farm machinery, and things like that, and the operator of the well finally got sick of it and put an additive in there and that ruined the machinery, and in retribution the farmer went out on the ground and flipped a match into it and burned up the whole installation.

There has been some question as to the additives difficulties, the small thief feels it's his prerogative to steal as much as he can get away and he tends to destroy equipment. It was felt from our company's standpoint that we would rather not do that. We have had some experience ourselves.

MR. PORTER: You would like to catch these people, but

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you don't want to antagonize them?

A You could put it that way, yes.

Q Did El Paso have any additional recommendations to make concerning policing?

A No, sir. It's my understanding, in discussion with the policing agencies that we have in the San Juan Basin area at the present time, that they felt this would go a long way toward helping them to police the problem. Mr. Ramsey, with the Bureau of Revenue, is here today and testified at the previous hearing and told us of some experience he had to go through spending all night wandering around the field and using night **glasses** and things of that kind. I think he felt that he would get a little more sleep if he could catch them on the highway rather than chase them around the field all night. It was my understanding that this would help them considerably.

MR. PORTER: Mr. Kelly, I believe you have a question.

BY MR. KELLY:

Q I believe you testified on direct that in your opinion the majority of the thefts of this nature are by people just taking several gallons or a small quantity?

A That's my understanding. Now, as to the volume, I mean the quantity of the product that is stolen, of course, one or two big trucks sneaking in and getting off with a big truck load can

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steal a whole lot more quantity than these people that go out with a barrel in the back end of a pickup. The number of people stealing is much greater in this barrel or two-barrel theft range.

Q This proposed new rule would have no change on the small theft, though, isn't that right?

A If the policing officer catches a man with a barrel of drip in the back of the pickup and he doesn't have a C-110-A, he can prosecute him because he doesn't have a C-110-A just like a big truck.

Q Isn't it possible to work out a system where the supervising officer would have authority to stop automobiles without going through this complicated bookkeeping system?

A Mr. Kelly, I doubt it. They haven't been able to. They don't have the authority, as I understand it, under the present statutes or under any other rules or regulations of the Commission to stop anybody on the highway. The statutory changes would have to be made so that the policing officers could stop somebody on the highway and check them. This would be one method of doing it.

Q Going on to Form C-110-B --

A Yes.

Q -- we discussed this with you this morning. As I understand the rule, when you have a purchaser who is not the



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producer he is required to have a C-110-B from the producer?

A That's correct.

Q Or the owner, as we've changed it this morning?

A Yes.

Q And if he, as you described in your direct testimony, immediately sells that drip without trucking it in himself, he has to furnish a C-110-B to whatever trucking company or purchaser purchased it from him?

A Yes, sir, that would be the intent of the present rule.

Q That would require that the trucker have two copies of the 110-B in his possession?

A Yes, sir.

Q If you had a case where a trucking company had a fleet of a hundred trucks and purchased from say four or five different producers or owners, that would mean that each truck would have to have the two copies in their possession from each of the producers?

A Yes, under the present rule, that's correct.

Q Do you feel that there's any way that this particular bookkeeping system could be improved upon as far as that situation?

A Yes, sir. I think so, as you mentioned, we've discussed it already some this morning and the idea that occurs to me off-hand of a means of alleviating this situation where a trucking



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concern may have a great number of trucks and a great number of contracts with original purchasers to subsequently pick up the drip, the rules provide that a copy of this C-110-B must be filed with the Commission.

Upon application, merely a letter requesting it from this trucking concern, it has a great number of companies it's buying from on a great number of secondary purchases it's making, the Commission, it would seem to me, could write a letter back to that trucking concern which would outline, it could be a form line with blanks in to just be filled in, subsequently outline the authorizations for which the Commission has copies of C-110-B in their files for that trucking concern in a particular area.

In other words, if trucking concern B is purchasing from W, X, Y, Z trucking firms or purchasers or original purchasers, and they're from twenty-five or thirty operators or owners, original owners, why the Commission could merely outline that the trucking concern is authorized to pick up for the first trucking concern, or, in other words, the original purchaser who is authorized by C-110-B to pick up from twenty-five different producers and name those producers. Then this secondary purchaser would only have to have one document, one instrument in addition to his individual trip ticket on his truck at any one time.



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Q An additional question has been raised as to the definition of drip.

A Yes, sir.

Q Assuming the situation which you have described where an outfit purchases this drip gas, and without trucking it, treats it as reclaimed crude and then passes it on to a trucker--

A Yes.

Q -- in your opinion, is the definition of the rule, would that exclude this type of transportation.

A My initial impression is, Mr. Kelly, that it probably would. This would not be, I mean the situation you described would not, the product would not at that time be condensate or drip as it's defined here. As we found in our meeting, our meetings, we can conceive of a great number of situations that maybe the rule doesn't cover specifically. Most of the reputable trucking concerns and firms and most of the producers are going to have contracts with concerns that they feel they can trust are going to abide by the rule. They, at the present time, have some sort of a manifest or something that they could substitute the papers for. The burden of the paper work would not be any greater than they now have.

The man that we are trying to catch is the one that's not complying with any rules or regulations. He's just out there



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stealing it. I think this rule would be a long step in attempting to alleviate some of that situation. As I say, we can think of many situations that the rule doesn't specifically cover, and maybe after some experience operating under the rule it may need to be amended. At the present time the companies that met felt this covered most of the situations that we could think of.

Q Is it El Paso's recommendation that reclaimed crude would not be under the rule?

A I would think so, yes, sir.

MR. KELLY: That's all.

MR. PORTER: Does anyone else have a question of Mr. Rainey? Mr. Nutter.

BY MR. NUTTER:

Q You mentioned on your direct testimony that this is merely a proposed form for the rule, but that the companies would be able to produce the form themselves.

A The company should reproduce a Commission-designed or Commission-authenticated form. It was not our intention or the intention of the people that worked on this that the Commission would have to put serial numbers on a whole stack of forms and issue them to each individual trucking company or each individual producer, but that each producer or company would print their own forms with their own numerical sequence on it in compliance with



the form authorized by the Commission.

Q Was it also your thought, then, Mr. Rainey, that in the event that a company had other information that it needed for its manifest or for its trip ticket, that it could also include that on the form that it itself used?

A I see no objection to that as long as there is no --

Q The information would be on the form and such additional information that the company would want could be included?

A Right. I think that it would be advisable that the basic format of the form should be as close to the Commission form as possible so that the arresting officer, or investigating officer, would not have to become familiar with a dozen different types of forms, but any other information could readily be put on there, and I see no objection to it.

MR. PORTER: Does anyone else have a question?

MR. WHITWORTH: I have one more.

REDIRECT EXAMINATION

BY MR. WHITWORTH:

Q Mr. Rainey, was proposed Rule 314 and proposed Form C-110-A and C-110-B prepared by you or under your supervision?

A I think it was typed by my secretary. It's the composite work of a great number of people.

MR. WHITWORTH: El Paso would label the rule and the two forms, the

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rule, as El Paso's Exhibit A, and C-110-A as El Paso's Exhibit B and C-110-B as El Paso's Exhibit C. We ask that these exhibits be accepted into evidence.

(Whereupon, El Paso's Exhibits A, B and C were marked for identification and offered into evidence.)

MR. PORTER: Without objection, the exhibits will be made a part of the record.

(Whereupon, El Paso's Exhibits A, B and C were admitted into evidence.)

MR. PORTER: Does anyone else have a question of Mr. Rainey? Mr. Nutter.

MR. NUTTER: For the record, I would like to offer the form that I presented as Staff Exhibit A in this case.

MR. PORTER: Without objection, the Staff Exhibit will be admitted.

(Whereupon, Staff Exhibit A was offered and admitted into evidence.)

MR. PORTER: No further questions, the witness may be excused.

(Witness excused.)

MR. PORTER: Does anyone else desire to present testimony in the case?

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MR. KELLY: I have one witness.

MR. PORTER: Will you call your witness, please?

(Witness sworn.)

W. A. REAGIN

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KELLY:

Q Would you state your name, please?

A W. A. Reagin, General Superintendent of Reagin Trucking Company.

Q Will you explain to the Commission what business the Reagin Trucking Company is in?

A We're in New Mexico buying and selling **reclaimed** drip, scrubber oil, **tank bottom** oil, from salt water disposal units and other waste petroleum products.

Q Mr. Reagin, have you been present at the various meetings held by El Paso concerning the adoption of proposed Rule 314?

A I have.

Q Are you in general agreement on the rule?

A I am.

Q Could you tell the Commission if there is any objection that you have to the rule and what it is?

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A Yes. I have one objection. It's to the C-110-B. It's not an objection to it in its purpose, but in our business we are selling to these trucking companies that are crude oil purchasers, and in talking with them they tell me according to the way the rule is at the present, I would have to have a C-110-B from the people I buy it from. In turn, I would make a C-110-B to the company I'm going to sell it to, and they would have to have a copy of this C-110-B on each truck. They have better than 200 trucks. They are also purchasing from several other companies in the same business that I'm in. Therefore, the pile of C-110-B's on their trucks is going to get out of hand in their opinion.

They're hauling over two million barrels of oil a month in the New Mexico-Texas area, of which there's less than 10,000 barrels of drip and scrubber oil. They tell me if they have to haul all that paper around they'd just as soon forget about buying it. It kind of leaves me on a limb.

What I would like to propose, and I can't say that they're going to accept it, is that the C-110-B would either have a number, or as El Paso suggested, a form letter from the Commission where one piece of paper, the companies might accept that.

My objection is there's too much bookkeeping for the companies I'm selling to to be interested from me, and if they don't buy I am out of a market.



Q Now, by the use of a number, you mean a number that would be issued to the various producers that would be a substitute for the C-110-B with the individual trucker that would be on the C-110-A form?

A The way I understand it, when we get a C-110-B it will be issued the same as the **C-110 is by the Commission,** and when it is issued they would give it a number and the number could be used in substitution of a copy.

Q So, anyone who is examining the C-110-A form that was in possession of a trucker could look at the top and see the number and then from that number just figure out who the original owner or producer of the oil was, is that correct?

A That is my intention, yes.

Q You've testified that you have reason to believe that you will lose markets as the result of the use of the C-110-B form in its proposed use. Do you feel that this could result in the waste of this drip gas, possibly not be sold, actually be wasted?

A Certain areas of our gathering system we have pipeline connections. That oil that we gather there we can sell to the pipeline. But there's areas specifically around the town of Artesia where we have no pipeline connection and the hauling distance to our nearest pipeline connection would be prohibitive

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to us trying to gather this oil at its present price and contracting conditions. Therefore, there's a chance that we would have to turn it down. I understand the other people in that area that's gathering are selling to the same people we are. We lose our markets, they lose theirs.

Q Does your company, for the majority of the drip it purchases, does it treat it at the purchase site?

A Yes. Yes, most of the drip, when the drip comes out of the line it's, as all of us know, it's cut crude or gasoline with a certain amount of water condensate in the line. We apparently have the unusual situation of **having** our own tanks set on a company's drips, when the oil comes out of the drips into the tanks it is contaminated, we add chemical there and **it takes a certain amount of settling time until it becomes good oil. At that time we sell it to our market.**

Q So, actually, you are not selling drip, the majority of your sales are not selling drip as defined under the proposed rule?

A That's a question I am not smart enough to answer. I've asked everybody I've come accross.

Q Would you join in El Paso's recommendation that that not be included in the rule?

A I would hope to, because I think it would save my



markets, yes.

MR. KELLY: That's all.

MR. PORTER: Does anyone have any question of Mr. Reagin? If no questions of the witness, he may be excused.

(Witness excused.)

MR. PORTER: Does anyone else desire to present testimony? Anyone like to make a statement? Mr. Hensley.

MR. HENSLEY: Please let the record reflect that the Humble Oil & Refining Company recommends and supports the proposed revision of Rule 314, Gathering, Transporting and Sale of Drip Condensate as written in the proposal of El Paso Natural Gas Company.

MR. PORTER: Mr. Eaton.

MR. EATON: For Pan American Petroleum Corporation, George W. Eaton, Jr. Pan American recommends the adoption of the proposed revised Rule 314 and the new Form C-110-A and C-110-B. We do so because we are of the opinion that this is a step in the right direction towards the solution of a problem that's a common one to us all. We also recognize, however, that subsequent events may show us that another change in this rule is necessary to completely solve this problem. In other words, while Pan American supports the proposed revision, we are completely flexible with regard to any further revision that may be warranted.

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MR. PORTER: Anyone else like to make a statement?

Mr. Payne.

MR. PAYNE: We have received two communications, one from Texaco, Inc., which says that Texaco would like to go on record as concurring with the proposed revision and urges the Commission to adopt the rule as submitted.

The second one is from the Famariss Oil & Refining Company and reads as follows: "Re Case 2618 for inclusion in testimony of hearing our company opposes the adoption of the proposed change to Rule 314 as we feel it is imposing unjustified expense and hardship by unnecessary record keeping by parties who are disinterested in the production of condensate and are parties after the fact. True remedy should be found in the addition of additives of heavy hydro carbon fraction making such condensate unfit for motor fuel use. There are substantial funds granted the Gasoline Tax Division of the Bureau of Revenue for administration and collection of taxes and the greater portion of such appropriation is being returned to the general fund as excess above administrative needs. We suggest that these sums which I am informed exceed \$700,000 be retained in that portion necessary for additional personnel who can properly police the producing leases and prevent theft. Parties policing should have the fortitude to vigorously pursue prosecution of guilty parties and every effort

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should be made to involk more severe penalties and fines for violators." Signed "Walter Famariss, Jr., President."

MR. PORTER: Mr. Whitworth.

MR. WHITWORTH: If it please the Commission, El Paso would like to recall Mr. Rainey to clarify a possible misunderstanding.

MR. PORTER: You may do so. Mr. Rainey.

DAVID RAINEY

recalled as a witness, having been previously duly sworn, testified further as follows:

REDIRECT EXAMINATION

BY MR. WHITWORTH:

Q You have heard the testimony, Mr. Rainey, of the previous witness--

A Yes, sir.

Q -- concerning recommendations by El Paso that some provision be made in the rule to exclude drip gasoline that has been treated in a certain manner? Would you care to comment on that?

A Yes, sir. I misunderstood Mr. Kelly's question, but I hesitate to argue with Mr. Reagin about the treating business. What I thought he meant about the oil that has been treated not being included under the rule, I had in mind a refining process



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or actual treating plant processes. It's my understanding, or has always been my understanding, that the drip and the crude oil, if it is sometimes in the lines that way that Mr. Reagin is talking about where he merely settles it out and by some chemical additive makes the water separate from the condensate and crude, is the very stuff we're trying to catch by this rule. It was not my intention to indicate that that type of treating would be an exception, because to my way of thinking, what I meant by the treating was something that actually changes the physical or chemical composition of the product.

If I understand Mr. Reagin's testimony, all he's doing is settling the oil and BS&W out of the bottom of the tanks. This drip that he picks up from these tanks attached to gathering system lines is the very stuff we're trying to keep control over.

Q Drip as defined in paragraph (a) of proposed Rule 314 is the recommendation of El Paso, is that true?

A Yes, sir. That's correct.

Q And we stand by that definition?

A Yes, sir. My understanding of what Mr. Kelly was talking about a moment ago was waste, sediment oil, tank bottoms and things of that kind that you would actually physically treat in special treating plant facilities.

Q Do you have anything else you would like to add to your



testimony?

A No. I just didn't want to leave that misunderstanding, because I didn't understand your question properly.

MR. WHITWORTH: That's all we have.

MR. PORTER: Excuse us just a moment, Mr. Whitworth.

Mr. Rainey, will you remain on the stand?

Does anyone have a question of Mr. Rainey?

A If I might add one thing, Mr. Porter.

MR. PORTER: Surely.

A I would recall to the Commission's attention that Rule 311 provides for disposal and use and transportation, and so forth, of the tank bottoms and sediment oil and waste oil. It's already taken care of.

MR. PORTER: If there are no questions, the witness may be excused.

(Witness excused.)

MR. PORTER: At this time the Commission would be interested in hearing the opinion of any attorney or any number of attorneys present as to whether or not it is felt that the Commission has the jurisdiction to go as far as has been recommended in the enforcement of this rule. Anyone care to state an opinion? Maybe I should have asked the engineers. Mr. Whitworth.

MR. WHITWORTH: I think the Commission certainly has



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authority to provide for certificates of clearance and tenders as provided in the New Mexico statutes. This is in the nature of a certificate of clearance, or trip ticket, and I think the statute authorizing those things encompasses what we have tried to do here. I don't think there's any question about the Commission authority.

MR. PORTER: Mr. Kelly.

MR. KELLY: I might say that I don't feel that merely by some forms that I feel that are to be filled out by too many individuals and too great a bookkeeping problem, that the Commission then has authority where it didn't have before to stop trucks on the highway. I think what needs to be done is to go back and actually change the law, the authority of the supervising officers of the Commission. I don't think by creating a form you therefore can stop trucks. I do think that by creating all these forms for truckers that are in this business, and it is not where the crimes are being committed, you are not going after the real individuals who are responsible for this.

I think the question is to get the Commission authority to stop any suspect and not to require a bunch of truckers to have forty forms in their possession and a trucking company to have about five hundred copies of one individual form.

MR. PORTER: Mr. Whitworth.



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MR. WHITWORTH: Specifically, I was talking about Section 65-3-11 of New Mexico Statutes. It reads thusly:

"Included in the power given to the Commission is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy thereof; to limit and prorate production of crude petroleum oil or natural gas, or both, as in this act provided; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products thereof, or both such oil and products, or both such natural gas and products."

I think the language of that portion of the statute is very clear and that the Commission does have the authority to stop trucks and make inspections and enforce it's rule.

MR. PORTER: Mr. Kelly.

MR. KELLY: If that's the question, then I feel that probably all of this is unnecessary if they have the authority to stop it now. If these forms are going to be printed up by the truckers even though it's a form prescribed by the Commission,



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anyone can read the statute and find out how to forge it. I don't see the fact that someone is going to be in the business of stealing this drip, he's going to go to the problem of forging a couple of forms and carrying them with him at all times. It's going to require the investigating officer to do some checking around, at any rate, even if the forms are there. Without the forms he can still get all the necessary information right from the trucker and then check back to whatever authority or the person who he claims sold it to him or to the Commission, or whatever system the Commission works out, to find out if this man is actually authorized because I think it's clear that if you can read the statute and find out how to forge a form, that anyone who is going to be in the business is going to be forging the forms.

MR. PORTER: Anyone else care to state an opinion?

Mr. Payne.

MR. PAYNE: There is some doubt in my mind whether the Commission has this authority, because I believe that particular portion of 65-3-11 that Mr. Whitworth refers to is actually designed to prevent production in excess of the allowable, and the transportation of the production in excess of the allowable. As I understand it, this condensate is not, it's not production in excess of the allowable. I don't believe it comes under the



definition of surplus waste in 65-3-3, because **beneficial use is** probably made of it even though it is stolen. So while I wouldn't state any firm opinion one way or another, there is some doubt in my mind.

MR. PORTER: Are you making this statement as a representative of the Attorney General's office?

MR. PAYNE: As attorney for the Commission and not as Assistant Attorney General.

MR. PORTER: That's what I wanted to clear up. Does anyone care to state an opinion? The Commission will take the case under advisement.

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