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May 27, 1987

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New Mexico Oil Conservation Commission  
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RECEIVED

MAY 27 1987

Attn: William E. Lemay, Chairman

OIL CONSERVATION DIVISION

Re: Commission Case No. 9063 -- Order No. R-8442  
Application of Merrion Oil & Gas Corporation  
for Enforcement of the Common Purchaser  
Requirements of Section 70-2-19 NMSA 1978 (1984 Supp.)  
Rio Arriba County, New Mexico

Dear Mr. Lemay:

Enclosed herewith is Application for Rehearing prepared and submitted on behalf of Merrion Oil & Gas Corporation in the above-referenced matter.

Sincerely,

*Tommy Roberts*

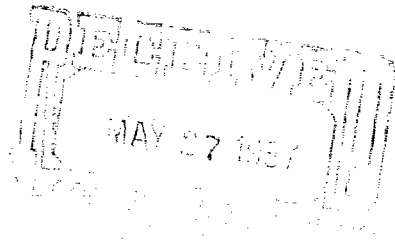
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TR:nk  
Enclosure

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STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION  
OF MERRION OIL & GAS CORPORATION  
FOR THE ENFORCEMENT OF THE COMMON  
PURCHASER REQUIREMENTS OF SECTION  
70-2-19 NMSA 1978 (1984 SUPP.)  
AND OTHER PERTINENT PROVISIONS  
OF THE OIL AND GAS ACT, RIO ARRIBA  
COUNTY, NEW MEXICO.

Case No. 9063  
Order No. R-8442

APPLICATION FOR REHEARING

Applicant, Merrion Oil & Gas Corporation (hereinafter sometimes referred to as "MOG"), hereby respectfully submits this Application For Rehearing with respect to Order No. R-8442 entered by the New Mexico Oil Conservation Commission (hereinafter sometimes referred to as "NMOCC") in Case No. 9063 on May 7, 1987, and as grounds therefor states its belief that such Order is erroneous for the following reasons:

1. It does not contain a finding that El Paso Natural Gas Company (hereinafter sometimes referred to as "EPNG") is a common purchaser within the common source of supply known as the Gavilan Mancos Oil Pool;

2. It does not contain a finding that the contracting and purchasing activities of EPNG within the common source of supply known as the Gavilan Mancos Oil Pool constitute unreasonable discrimination against MOG and in favor of numerous

other producers of casinghead gas in the common source of supply, including an affiliate company of EPNG;

3. It does not contain a finding that EPNG could satisfy its responsibilities as a common purchaser with respect to the casinghead gas in question by means of its gas transportation facilities then in service;

4. It does not contain a finding that the purchase by EPNG of the casinghead gas in question on such terms and conditions as tendered by MOG would not adversely impact the economics of EPNG's pipeline and purchasing operations and would not adversely impact consumer interests;

5. It orders MOG to contact and make diligent effort to contract for purchase of the casinghead gas in question with various purchasers identified in the Order as a condition precedent to entitlement to the relief provided by the Order and the Common Purchaser Statute;

6. It does not order EPNG to purchase casinghead gas produced from the wells in question without discrimination as to the terms, conditions and provisions of purchase as compared to casinghead gas from other wells of like quantity, quality and pressure which EPNG is purchasing, or has purchased, in the common source of supply known as the Gavilan Mancos Oil Pool; and

7. It does not order EPNG to take ratably the casinghead gas produced from the wells in question so as to prevent waste, to protect MOG's correlative rights and to carry out the overall purposes of the Oil and Gas Act of the State of New Mexico.

As grounds for its beliefs stated above and in further support of this application, MOG states:

1. Section 70-2-19 NMSA 1978 (1984 Supp.) (hereinafter sometimes referred to as "the Common Purchaser Statute") sets forth the definition of a "a common purchaser" as "Any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells or casinghead gas produced from oil wells...within each common source of supply...". The testimony and evidence presented at the NMOCC hearing on March 5, 1987 is uncontroverted with respect to the status of EPNG as a common purchaser within the common source of supply known as the Gavilan Mancos Oil Pool. Michael Wiseman, testifying on behalf of EPNG, acknowledged that EPNG purchased casinghead gas from the Gavilan Mancos Oil Pool from several producers through October 31, 1986 pursuant to the provisions of various gas purchase contracts with those producers. Mr. Wiseman also acknowledged that, effective November 1, 1986 and continuing to the time of the NMOCC hearing on March 5, 1987, El Paso Gas Marketing Company, an affiliate company to EPNG, commenced purchases of casinghead gas produced from the Gavilan Mancos Oil Pool by these producers pursuant to the provisions of a spot-market release program, which program operates to temporarily relieve EPNG of its purchase obligations pursuant to the provisions of the gas purchase contracts under which EPNG purchased casinghead gas produced from the Gavilan Mancos Oil Pool prior to November 1, 1986. In addition, Mr. Wiseman

indicated that the gas purchase contracts under which EPNG purchased casinghead gas prior to November 1, 1986 were still in force and effect and he testified that, although no current purchases were being made under those contracts, it was the hope of EPNG that purchases would be resumed under those contracts at some point in the future. Consequently, the record in this matter permits a finding by the NMOCC that EPNG, by itself and through its affiliate, El Paso Gas Marketing Company, is a common purchaser of casinghead gas production from the common source of supply known as the Gavilan Mancos Oil Pool.

2. The primary proof of EPNG's discriminatory conduct towards MOG is evidenced by its failure to purchase volumes of casinghead gas from the wells in question tendered to it by MOG in accordance with the provisions of the Common Purchaser Statute at times when it was purchasing casinghead gas from other producers within the common source of supply known as the Gavilan Mancos Oil Pool pursuant to gas purchase contracts between EPNG and those producers. The testimony and evidence presented at the NMOCC hearing on March 5, 1987 clearly establishes the facts that (1) the quality and pressure of the casinghead gas available from the wells in question is of like quality and pressure as the casinghead gas purchased by EPNG, either directly or through its affiliate, El Paso Gas Marketing Company, from other producers in the Gavilan Mancos Oil Pool, (2) EPNG has consummated gas purchase contracts with various producers applicable to casinghead gas within the common source

of supply known as the Gavilan Mancos Oil Pool, (3) one such gas purchase contract is with Southland Royalty Company, a company which later became, and is now, an affiliate company of EPNG, (4) one such gas purchase contract, dated May 15, 1986 in favor of Amoco Production Company and covering Amoco Production Company's interest in the Merrion Oil & Gas Corporation Oso Canyon Gas Com "C" No. 1 Well, was consummated after MOG had originally tendered the casinghead gas from the Merrion Oil & Gas Corporation Oso Canyon Gas Com "C" No. 1 Well and the Merrion Oil & Gas Corporation Krystina Gas Com No. 1 Well to EPNG, and (5) EPNG, either directly or through its affiliate, El Paso Gas Marketing Company, has purchased, and continues to purchase, casinghead gas production from the common source of supply known as the Gavilan Mancos Oil Pool from those producers who have the benefit of gas purchase contracts with EPNG, including Southland Royalty Company and Amoco Production Company.

A review and comparison of the terms and provisions of the gas purchase contracts which were tendered into evidence at the NMOCC hearing on March 5, 1987 as MOG Exhibit Nos. 7-11 provide additional evidence of the discriminatory nature of the contracting and purchasing activities of EPNG in the common source of supply known as the Gavilan Mancos Oil Pool. First, a review of these gas purchase contracts leads to the reasonable conclusion that the contract extended to Southland Royalty Company is the most favorable, notwithstanding the fact that all of

these gas purchase contracts were consummated in a relatively short span of time. For example, the Southland Royalty Company contract requires EPNG to purchase and receive all volumes of gas Southland Royalty Company shall have available for delivery, while, in contrast, the other contracts submitted into evidence contain less favorable percentage purchase obligations or "best effort" purchase obligations. Second, although the Southland Royalty Company contract may have been negotiated and consummated prior to the date on which Southland Royalty Company became affiliated with EPNG, Southland Royalty Company has received the benefit of purchases of casinghead gas made under, or as a result of, that contract from the date of its consummation through the present time. The period of the benefit to Southland Royalty Company has overlapped, to a large extent, the period of time during which MOG has unsuccessfully attempted to obtain from EPNG a commitment to purchase casinghead gas production from the wells in question. Third, at all times during which EPNG has excluded MOG from its purchasing activities in the Gavilan Mancos Oil Pool and during which EPNG has continued to purchase casinghead gas production from Southland Royalty Company and other producers in the pool, EPNG has afforded Southland Royalty Company and such other producers a tremendous advantage over MOG in (1) competing for oil and gas reserves within the common source of supply, (2) conducting their respective operations in the common source of supply, and (3) protecting their respective correlative rights.

Consequently, the record in this matter permits a finding by the NMOCC that EPNG has unreasonably discriminated against MOG and in favor of other producers, including EPNG's affiliate, Southland Royalty Company, in its contracting and purchasing activities in the common source of supply known as the Gavilan Mancos Oil Pool.

3. Subsection F of Section 70-2-19 NMSA 1978 (1984 Supp.) provides that "Nothing...shall be construed or applied to require, directly or indirectly, any person to purchase gas of a quality or under a pressure or under any other condition by reason of which such gas can not be economically and satisfactorily used by such purchaser by means of his gas transportation facilities then in service.". During the NMOCC hearing on March 5, 1987, EPNG submitted no evidence which would permit a finding that the casinghead gas offered by MOG was of a quality or a pressure which would require the installation of additional transportation facilities, nor did EPNG submit evidence of the existence of other conditions which would permit a finding that the casinghead gas offered by MOG could not be economically and satisfactorily used by EPNG by means of its gas transportation facilities then in service. On the other hand, MOG presented uncontroverted testimony and evidence which would allow the NMOCC to conclude that EPNG could satisfy its responsibilities as a common purchaser by means of its gas transportation facilities then in service. Among other things, the record reflects that MOG tendered the casinghead gas in question to EPNG on terms which would enable



EPNG to avoid the costs of gathering and delivering the gas to its existing transportation facilities. Consequently, the record in this matter permits a finding by the NMOCC that EPNG could satisfy its responsibilities as a common purchaser with respect to the casinghead gas in question by means of its gas transportation facilities then in service.

4. The record in this matter reflects that MOG tendered to EPNG the casinghead gas in question on terms and conditions designed to avoid an adverse economic impact on the pipeline and purchasing operations of EPNG and to avoid an adverse impact on consumer interests. Specifically, the record reflects that MOG proposed to pay all costs associated with laying a gathering line to EPNG's existing transportation facilities, to sell the casinghead gas in question at a market-clearing price and to cancel EPNG's contractual take-or-pay obligations to MOG in an amount of gas equal in heating value to the casinghead gas taken by EPNG from the Merrion Oil & Gas Corporation Oso Canyon Gas Com "C" No. 1 Well and the Merrion Oil & Gas Corporation Krystina Gas Com No. 1 Well. Notwithstanding the fact that the record in this matter would support a finding by the NMOCC that MOG tendered the casinghead gas in question on terms and conditions designed to avoid causing adverse economic impact on the pipeline and purchasing operations of EPNG and on consumer interests, a review of the transcript of the hearing on March 5, 1987 reveals a deficiency of persuasive and convincing evidence as to the actual impact purchases on such terms and conditions

would have on EPNG's pipeline and purchasing operations and on consumer interests. MOG believes that an appropriate issue for consideration on rehearing is whether, and to what extent, purchases on such terms and conditions would adversely impact the economics of EPNG's pipeline and purchasing operations and consumer interests. Evidence and testimony relevant to that issue could possibly establish the necessary foundation for a finding by the NMOCC that the purchase by EPNG of the casinghead gas in question on such terms and conditions as tendered by MOG would not adversely impact those economics and interests.

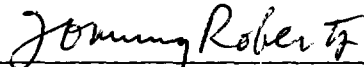
5. The Common Purchaser Statute applies to "Any person now or hereafter engaged in purchasing from one or more producers...". (emphasis added). The plain and unambiguous language of the statute reflects the clear intent of the legislature that the terms, conditions and provisions set forth in the statute apply to each and every purchaser within a common source of supply. The statute does not require a party to seek relief from the predominant purchaser in the common source of supply. The statute does not require a party to seek relief from the purchaser in the common source of supply whose facilities are nearest to the wells of the party seeking relief. Finally, the statute does not require a party seeking relief under the statute to attempt to consummate a sale and purchase of gas with each and every purchaser in a common source of supply as a condition precedent to seeking relief under the statute against any one of those purchasers. The Common Purchaser Statute does

permit a party seeking relief to be selective in choosing the purchaser from whom it seeks relief. The burden of compliance with the provisions of the statute automatically attaches to any person or entity who assumes purchaser status in a common source of supply. It is the contention of MOG that the Order entered by the NMOCC in this matter on May 7, 1987 is erroneous insofar as it requires MOG to contact and make diligent effort to contract for purchase of the casinghead gas in question with various purchasers identified in the Order as a condition precedent to entitlement to the relief provided by the Order and the Common Purchaser Statute.

In conclusion, it is the contention of MOG that the testimony and evidence submitted at the hearing on March 5, 1987, taken as a whole, supports the entry of an order by the NMOCC requiring EPNG to purchase casinghead gas from the Merrion Oil & Gas Corporation Oso Canyon Gas Com "C" No. 1 Well and the Merrion Oil & Gas Corporation Krystina Gas Com No. 1 Well on a non-discriminatory basis and on such terms and conditions as are consistent with the testimony and evidence submitted at the hearing. MOG further contends that the testimony and evidence submitted at the hearing on March 5, 1987 supports the entry of an order by the NMOCC requiring EPNG to take ratably the casinghead gas produced from these wells in order to prevent waste, to protect MOG's correlative rights and to carry out the overall purposes of the Oil and Gas Act of the State of

New Mexico. Consequently, MOG respectfully requests that the NMOCC grant this application as to all issues and questions identified herein.

Respectfully submitted,



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Attorney for Applicant  
Merrion Oil & Gas Corporation

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Application for Rehearing to be mailed to opposing counsel of record this 27th day of May, 1987.



TOMMY ROBERTS

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

RECEIVED

MAY 27 1987

IN THE MATTER OF THE APPLICATION )  
OF MERRION OIL AND GAS CORPORATION )  
FOR ENFORCEMENT OF THE COMMON )  
PURCHASER REQUIREMENTS OF SECTION )  
70-2-19 NMSA 1978 (1984 SUPP.) AND )  
OTHER PERTINENT PROVISIONS OF THE )  
OIL AND GAS ACT, GAVILAN-MANCOS )  
OIL POOL, RIO ARriba COUNTY, )  
NEW MEXICO )

OIL CONSERVATION DIVISION

CASE NO. 9063

APPLICATION OF EL PASO  
NATURAL GAS COMPANY FOR REHEARING

EL PASO NATURAL GAS COMPANY ("El Paso"), the respondent in the referenced proceeding, pursuant to Rule 1222 of the Rules on Procedure of the Oil Conservation Division, respectfully submits this its Application for Rehearing of Order No. R-8442 of the Oil Conservation Commission ("the Commission") in the above-referenced proceeding, and in support thereof would show the following:

El Paso is an interstate natural gas pipeline company engaged in the business of producing, purchasing, transporting, and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. As an interstate gas pipeline, El Paso is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act ("NGA"),

15 U.S.C. §§ 717, et seq., and the Natural Gas Policy Act ("NCPA"), 15 U.S.C. §§ 3301, et seq.

Applicant in the above-described proceeding, Merrion Oil and Gas Corporation ("Merrion"), requested that the Commission enter an order requiring El Paso to purchase casinghead gas and to continue to take ratably the casinghead gas produced from the Oso Canyon Gas Com "C" No. 1 and the Krystina Gas Com. No. 1 wells, operated by Merrion in Rio Arriba County, New Mexico. Merrion alleged that El Paso's failure to take such casinghead gas constituted a violation of the "common purchaser" requirements of N.M. Stat. Ann. § 70-2-19 (Supp. 1986) and other pertinent provisions of the Oil and Gas Act, N.M. Stat. Ann. §§ 70-2-1 to 70-2-36 (1978). At the hearing before the Commission on March 5, 1987, testimony and evidence were taken on the issues of the ability of the above-described wells to produce, Merrion's tender of casinghead gas from the wells, El Paso's purchasing practices in the Gavilan Mancos Oil Pool from which such wells would produce oil and casinghead gas, and El Paso's course of conduct with respect to Merrion, including offers to purchase or transport the gas which were rejected by Merrion.

Following the hearing, each of the parties submitted written closing statements and briefs on the issue of the Commission's jurisdiction to require El Paso, as an interstate pipeline company, to purchase and take casinghead gas from wells to which it is not presently connected and for which it does not have a gas purchase contract in effect. In its Brief El Paso argued

that the Commission should decline to accept jurisdiction over the proceeding or, alternatively, that the Commission dismiss the application on the grounds of federal preemption of the subject matter.

Order No. R-8442, issued by the Commission on May 7, 1987, appears to recognize the jurisdictional problem of requiring El Paso to purchase the casinghead gas tendered by Merrion. The relief granted in the Order includes the requirement that El Paso "shall connect, or permit to be connected, to its pipeline system the casinghead gas produced" by the two Merrion wells. Merrion is authorized to lay the pipeline and install necessary metering and tap facilities if El Paso declines to install them. Merrion is then to "make a diligent effort to contract for purchase of its gas," to report its progress in such efforts by June 1, 1987, and to be entitled to a hearing to "provide appropriate relief" if those efforts are unsuccessful. El Paso, meanwhile, would be required to take into consideration Merrion's expense and investment in facilities necessary to connect the wells in setting El Paso's rates for gathering or transportation services. Further, El Paso would apparently be required to take not only gas tendered by Merrion, but also any additional gas which might be taken by Merrion in sharing its gathering system with other owners of wells presently unconnected in the area.

For the reasons described below, El Paso respectfully submits that the Commission should reconsider its Order

No. R-8442 and that such Order should be vacated and the application of Merrion be denied:

1. As noted by the Commission, El Paso has previously expressed its willingness to tie in the casinghead production of Merrion's wells. If Merrion is willing to bear the costs associated with the installation of pipeline and connecting facilities, El Paso stands ready to provide appropriate access to any market that Merrion can find for its gas. Because El Paso has offered, and continues to offer, such access on such terms, the Commission's Order is unnecessary and moot. For this reason alone, it would be appropriate that the Order be vacated and Merrion's application dismissed. Vacating the Order would, moreover, avoid the necessity of addressing the issues of lack of authority and conflict of jurisdiction which the Order currently raises.

2. The apparent authority of the Commission to require nondiscriminatory purchasing or taking of gas or casinghead gas is derived from N.M. Stat. Ann. § 70-2-19 (Supp. 1986) ("the Common Purchaser Statute"). A "common purchaser" within a common source of supply is defined as "[a]ny person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells or casing-head gas produced from oil wells." The Commission, however, has expressly noted in Finding Paragraph (13) that El Paso is not a purchaser:

(13) EPNG's role in the Gavilan-Mancos Oil Pool is strictly that of gatherer and transporter and not of purchaser of gas although EPNG holds contracts for purchase of



gas from owners of several wells in the pool. . . . [Emphasis added.]

A significant question arises regarding the Commission's authority to issue Order R-8442 if El Paso is not a purchaser of gas and, therefore, not a "common purchaser" within the Gavilan-Mancos Oil Pool. The Common Purchaser Statute cannot reasonably provide the basis for the actions which the Commission purports to require of El Paso.

3. The Commission's attempted exercise of authority over El Paso's transportation function also conflicts with El Paso's status as an interstate purchaser, transporter, and seller of gas, subject to FERC regulation under the NGA and the NGPA. As El Paso stated in its brief on the jurisdiction issue, the Commission may not invade the exclusive jurisdiction which the NGA and the NGPA confer upon the FERC with respect to purchases of gas for resale in interstate commerce. The same would hold true with respect to the interstate transportation of gas. The United States Supreme Court has twice struck down attempts by state agencies to regulate purchasing activities of interstate pipelines, first under the NGA and subsequently under the NGPA. In Northern Natural Gas Co. v. State Corp. Commission, 372 U.S. 84 (1963), the Court held invalid orders of the Kansas Corporation Commission which would directly affect the ability of Federal Power Commission (predecessor of FERC) to regulate effectively the transportation and sale of gas in interstate commerce under the NGA. The passage of the NGPA did not give

states authority to occupy the field of regulation over deregulated first sales of gas, the Court held in Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 474 U.S. \_\_\_\_\_, 106 S. Ct. 709 (1986). More recently, in Northwest Central Pipeline Corp. v. Corporation Com'n of Kansas, \_\_\_\_\_ U.S. \_\_\_\_\_, 89 L.Ed.2d 289 (1986) (mem.), the Court applied the Transco holding to a proposed amendment of the basic proration order for the Kansas Hugoton Field. In Northwest Central the Court vacated the judgment of the Supreme Court of Kansas and remanded the case for further consideration in light of Transco. It is clear that the Court intends a broad reading to be given to the Transco decision. It would be erroneous to characterize Transco as turning solely on the issue of increased cost of gas to the consumer, as this Commission has done in a separate proceeding (Commission Order No. R-8441, issued May 7, 197, in Case No. 9015). Transco and the other decisions each stand for the proposition that a state's regulation of production may not interfere with the regulatory mandate of the FERC under the NGA and the NGPA. An attempt by this Commission to require El Paso to tie in production, on whatever basis, would conflict with the authority of the FERC to regulate transportation of gas in interstate commerce under Section 7(c) of the NGA, Section 311 of the NGPA, and the requirements of FERC Order Nos. 436 and 436-A (issued October 9 and December 12, 1985, respectively), and should be avoided.

4. There are certain unresolved issues raised by the Commission's Order which tend to exacerbate the jurisdictional problems described above. El Paso's transportation rates, which are part of its tariff filed with the FERC, are not subject to the types of adjustment envisioned by Ordering Paragraph (4) of the Order. Such paragraph would require due consideration be given to Merrion's expense and investment in gathering facilities as El Paso assesses its charges for gathering or transportation. Ordering Paragraph (5) would allow other producers to tie into Merrion's gathering system, implicitly requiring El Paso to take such gas, as well. The provisions of Ordering Paragraph (6), stating that the Commission would address future marketing problems caused by the Commission's priority schedule if implemented, would invade the exclusive jurisdiction which the NGA and the NGPA confer upon FERC. The possibility of a future hearing to provide Merrion further appropriate relief simply compounds the potential impact on El Paso's operations and the potential conflict with federal regulations promulgated pursuant to the NGA and the NGPA.

5. Finally, El Paso submits that the Commission should vacate its Order in this proceeding and should grant rehearing, if appropriate, for the following reasons:

a. The Order of the Commission is arbitrary and capricious;

b. The Order of the Commission is not based upon substantial evidence; and

c. The Order of the Commission is contrary to law.

WHEREFORE, for the foregoing reasons El Paso respectfully requests that the Commission vacate its Order No. R-8442, that the application of Merrion be dismissed as moot or, alternatively, as a matter over which the Commission has neither authority nor jurisdiction to act.

Respectfully submitted,

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Attorneys for Respondent  
EL PASO NATURAL GAS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application of El Paso Natural Gas Company for Rehearing to be mailed to Tommy Roberts, Esquire, attorney for Merrion Oil & Gas Corporation, at Post Office Box 129, Farmington, New Mexico 87499, this 27<sup>th</sup> day of May, 1987.

  
\_\_\_\_\_  
W. Perry Pearce

WPP/3