STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION TO CONSIDER THE APPLICATION OF:

CASE NO. 8769 De Novo
ORDER NO. R-8091-B

HOWARD OLSEN TO REOPEN CASE 8769, LEA COUNTY, NEW MEXICO

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on February 28, 1991, at Santa Fe, New Mexico before the Oil Conservation Commission of the State of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 25th day of April, 1991, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and further considering comments submitted pursuant to request of the Commission, and being fully advised in the premises,

FINDS THAT:

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

(2) This matter comes before the Commission on the de novo application of Doyle Hartman, by which Hartman requests the Commission dismiss the application of Howard Olsen to reopen this case.

(3) This matter was consolidated with Case 8668 for hearing because both cases raise the same issue for consideration, namely whether or not Doyle Hartman should be compelled to strictly comply with the Division order by which Olsen's working interest was force-pooled into a well operated by Hartman.

(4) The applicant Howard Olsen appeared by counsel only at this hearing and at the hearing before the Division examiner and relied solely on deposition evidence at both hearings.

(5) Doyle Hartman appeared through counsel at this hearing and presented evidence by deposition and by witness testimony.

(6) The evidence clearly shows that, contrary to the provisions of the original compulsory pooling order, Hartman did not provide Olsen with an AFE for the proposed well after the original compulsory pooling order was entered and before the well was drilled. The record also shows, however, that Olsen was well aware of Hartman's intention to drill the well, that he had received an AFE prior to the hearing on the original application and that he actually had negotiations with Hartman toward the sale of the interest to Hartman.

(7) The evidence further shows that Olsen is knowledgeable about the oil and gas industry and fully understood the nature of the transactions and activities involved in this matter.

(8) Olsen knew of the compulsory pooling hearing and that the well was drilled, as further evidenced by the fact that Hartman entered into litigation with El Paso Natural Gas over the gas purchase contracts for the well and offered Olsen the opportunity to be a party to that litigation, but Olsen did not participate in that lawsuit.

(9) Normally the Commission will require complete adherence to all provisions of its orders and those of the Division, and it relies on affected parties to raise any issues of non-compliance. When, as in this case, the party seeking strict compliance had knowledge of the Division hearing to force pool his interest, did not appear at that hearing and did not diligently pursue a remedy to the detriment of the other party it is reasonable to conclude that such party (Olsen) is attempting to gain a regulatory advantage by waiting until the well has demonstrated its commercial success including payout of the capital investment and a projected profit before requesting the option to participate under the original compulsory pooling order.

(10) The application of Howard Olsen to reopen this case to seek strict enforcement of the Division's compulsory pooling order should be dismissed as requested by Hartman.

(11) Operators who obtain compulsory pooling orders from the Division or the Commission should comply with the terms of those orders in providing the opportunity to parties pooled by those orders to prepay their pro rata share of costs to avoid a risk penalty, and only in unusual circumstances as are presented in this case will operators not be held to strict compliance with such orders.

IT IS THEREFORE ORDERED THAT:

(1) The application of Howard Olsen to reopen Case 8769 is hereby dismissed.

(2) Jurisdiction of this cause is retained for entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

GARY CARLSON,
Member

WILLIAM W. WEISS,
Member

WILLIAM J. LEMAY,
Chairman

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