

OIL CONSERVATION DIV.

STATE OF NEW MEXICO

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ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION COMMISSION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 12,033
)
 APPLICATION OF PUBLIC SERVICE COMPANY OF)
 NEW MEXICO FOR REVIEW OF OIL CONSERVATION)
 DIVISION DIRECTIVE DATED MARCH 13, 1998,)
 DIRECTING APPLICANT TO PERFORM ADDITIONAL)
 REMEDIATION FOR HYDROCARBON CONTAMINATION,)
 SAN JUAN COUNTY, NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
 JAMI BAILEY, COMMISSIONER
 ROBERT LEE, COMMISSIONER

November 17th, 1999

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Wednesday, November 17th, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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I N D E X

November 17th, 1999
 Commission Hearing
 CASE NO. 12,033

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:55 a.m.:

3 CHAIRMAN WROTENBERY: Okay, we'll take up Case
4 12,033. This is the Application of Public Service Company
5 of New Mexico for review of the Oil Conservation Division
6 Directive dated March 13, 1998, directing the Applicant to
7 perform additional remediation for hydrocarbon
8 contamination, San Juan County, New Mexico.

9 The Commission heard this case on August 26th and
10 27th of this year. We had two full days of hearing. And
11 at the conclusion of that hearing we asked the parties to
12 visit with one another on the current status of the
13 investigatory activities at the site and the current
14 results of the monitoring work that is being done out there
15 and report back to us at this meeting.

16 And so we're here today not to take additional
17 testimony but to hear from the representatives of the
18 parties in this case on the status of those discussions and
19 also to determine what our next steps are in this matter.

20 At this point let me call for appearances.

21 MR. CARR: May it please the Examiner, my name is
22 William F. Carr with the Santa Fe law firm Campbell, Carr,
23 Berge and Sheridan. We represent Burlington Resources Oil
24 and Gas Company in this matter, and appearing with me today
25 is John Bemis, Burlington's Farmington counsel.

1 MR. CARROLL: May it please the Commission, my
2 name is Rand Carroll, appearing on behalf of the Oil
3 Conservation Division.

4 MR. ALVIDREZ: May it please the Commission, my
5 name is Rick Alvidrez, appearing on behalf of Public
6 Service Company of New Mexico, and with me is Ms. Toni
7 Ristau of PNM's Environmental Services Department.

8 CHAIRMAN WROTENBERY: Thank you. I believe
9 that's everybody.

10 Let me just ask, and I don't know who wants to go
11 first here, but Mr. Alvidrez, I'll give you the
12 opportunity; you are the Applicant in this case.

13 MR. ALVIDREZ: We would be very glad to go first.

14 May it please the Commission, since the hearing
15 concluded in August of this year, the parties have
16 conferred -- that is, Public Service Company of New Mexico,
17 the Division and Burlington have conferred on site about
18 what further investigatory actions are appropriate at this
19 site.

20 And indeed additional investigatory activities
21 were performed in the form of the installation of three new
22 wells that were placed, really, in the area of Burlington's
23 former and current activities out at this site. And there
24 were some fairly significant findings that resulted from
25 the installation of those wells, and those wells were

1 installed just last month.

2 Of most significance is the discovery of two feet
3 of free product in a new monitoring well, MW-14, which is
4 located in the area of Burlington's former tank battery.
5 It's also in the area of a temporary well that was put in,
6 TPW-7, which, when that well was installed, had some very
7 high readings. And as PNM indicated at the hearing, we
8 felt fairly strongly that had that well been allowed to
9 stay in place it would have shown the presence of free
10 product. And indeed, that's been borne out by the
11 installation of MW-14.

12 This is suggestive of, again, either a continuing
13 source or a very large volume of free product underneath
14 this site. And it also shows that the remediation
15 activities that were carried out in the area of
16 Burlington's tank battery, where they have the large
17 excavation, were not successful in remediating the free-
18 product contamination in that area.

19 PNM also did a complete round of sampling of the
20 existing wells in this area, with the exception of MW-1,
21 and the results show that there is an upward trend of the
22 hydrocarbon contaminations in the seep area, which you may
23 recall is somewhat downgradient of where the mass
24 excavation was, and also MW-7, which is off the wellpad and
25 down the wellsite.

1 We saw a 100-percent increase in benzene and a
2 44-percent increase in BTEX based on the last sampling
3 event from the second quarter of 1999, which is a
4 significant finding because what it suggests is, the
5 activity that was taking place in the area of PNM's former
6 pit in terms of the mass excavation that went on there has
7 had the effect of what we feared, of pushing the
8 contamination downgradient, because we're seeing elevated
9 levels there.

10 MW-12, which was in the area of PNM's former
11 recovery well -- you may recall PNM had ongoing operations
12 in terms of recovery out at the site -- continues to show a
13 sheen -- this is the area of the mass excavation -- which
14 suggests again that there is still contamination. And
15 again, I've addressed the hydrocarbon seep, which is still
16 an issue.

17 The information that we see is consistent with a
18 continuing source, and it's also suggested that the
19 presence of the free product and the amount of the
20 dissolved phase that are present at this site are such that
21 the quantities are so great, natural attenuation is not
22 able to arrest the dissolved-phase contamination, and we're
23 seeing at least signs of an increase, which is an increase
24 off site, which is a concern.

25 PNM has submitted a letter outlining its opinions

1 and conclusions with regard to the recent activities that
2 took place out there. It's a letter dated October 29th,
3 1999, to the Division. And I would be glad to provide the
4 Commission with copies of the letter. I understand we're
5 not taking live testimony, and perhaps this isn't even part
6 of the evidentiary record in the case, but the letter is
7 useful in terms of identifying the location of where the
8 new monitoring wells are installed and showing what the lab
9 results are at this point, and I think it gives a pretty
10 good picture of what's going on out there.

11 The letter also contains PNM's recommendations
12 with respect to further activity that should take place at
13 this site.

14 It's interesting, one of the wells that was put
15 in was MW-15, and that was put in in the area of
16 Burlington's current and former unlined separator pit. You
17 may recall, there were two unlined pits at this place. A
18 lot of the testimony has centered around PNM's dehydrator
19 pit. Well, Burlington also had at least one unlined pit
20 out there, its separator pit.

21 And interestingly enough, when MW-15 was
22 installed in that area it didn't show free-product
23 contamination, suggesting, of course, that there wasn't
24 that much free product running through the separator and in
25 turn through the dehydrator to cause the type of

1 contamination that we are seeing out there in terms of free
2 product contamination.

3 The investigation seems to point, at least in
4 PNM's estimation, that a likely source is in the area of
5 the former tank battery, and there was apparently another
6 unlined pit in that area that was operated by Burlington.
7 And it appears that the pathway, if you will, for the
8 contamination to move downgradient is along the easternmost
9 side of the wellpad, and that is one of the areas that PNM
10 believes an additional well should be placed.

11 We also believe that a recovery well should be
12 installed at this site to start recovering the free product
13 and hopefully start arresting some of the dissolved-phase
14 contamination that we're seeing occurring at the site.

15 What we're afraid of is if that action isn't
16 taken, that what we're going to have is a recontamination
17 of the area in the area of PNM's former operations. As we
18 know, that was all taken out -- completely taken out by
19 Burlington last year, but if we don't get in there and
20 something isn't done, there's going to be a potential
21 recontamination of that area, and we certainly would not
22 want to see that.

23 I think one of the issues that will undoubtedly
24 be addressed is whether -- is who's paying for all this, I
25 guess. PNM has participated and consulted with respect to

1 the installation of the wells. PNM hasn't paid for the
2 wells. We have paid for the sampling that we've done,
3 which has been a bit more widespread than the sampling
4 that's been done by any of the other parties.

5 But in any case, it's clear that additional work
6 needs to be done at the site. Some offsite wells,
7 downgradient wells, probably also need to be installed, and
8 we understand the Division has instructed Burlington to
9 proceed along with the installation of those wells.

10 There have been some problems, as we understand
11 it, with access to the off-site well -- proposed well
12 locations, because the property has changed hands since PNM
13 initially put in one of its offsite wells and did some
14 sampling on the Everett Burton well. So we understand
15 access is one of the things that's holding things up.

16 But that, as we understand it, is the status of
17 things at the site.

18 I would mention -- I don't know if the Commission
19 wants to take the issue up at this time -- that PNM has
20 filed an application or motion to submit additional
21 testimony into the record based on the new findings with
22 regard to the thick product plume that's been found under
23 the area of Burlington's operations, and we're glad to
24 address that today or defer it to another date at the
25 Commission's pleasure.

1 CHAIRMAN WROTENBERY: Thank you, Mr. Alvidrez.
2 Mr. Carr?

3 MR. CARR: May it please the Commission, as Mr.
4 Alvidrez indicated, on September the 8th there was a
5 meeting at the site and negotiations and discussions with
6 PNM and with representatives of the OCD. It was agreed
7 that five additional monitor wells were needed.

8 Three of those have been drilled, they're on the
9 pad itself, and they're upgradient from the former PNM pit.

10 There are two additional wells that need to be
11 drilled. They have not been to date.

12 There is a meeting tomorrow with Williams Field
13 Service to go out and pick the location of one of those two
14 wells in the pipeline right of way.

15 The problem is that -- as to the last well, is
16 that a California group called The Quiet Hour has acquired
17 the property, and The Quiet Hour is not excited about
18 having us go onto the property to drill that last well.
19 And so we're having some problem getting on to actually
20 drill the last monitor well.

21 Mr. Alvidrez referenced a letter from PNM that
22 contains their recommendations as to what needs to be done
23 at this time. There are letters, there are written reports
24 on the activities at the site, that Burlington has filed
25 with the Division, and I'd like to hand those to you. They

1 summarize the activity, they reference the meeting at the
2 site, and they contain all of the data that has been
3 obtained since the hearing, the sampling results that were
4 done by PNM, and we split some of those samples.

5 I think it's important to remember that
6 Burlington is out there trying to remediate this site and
7 that PNM is willing to advise us and tell us what should be
8 done, but we really are trying to coordinate our efforts
9 with the Environmental Bureau of the Oil Conservation
10 Division, and whether or not PNM will share the costs
11 associated with the installation of downgradient wells,
12 we're going to continue to do this and continue to address
13 the problem.

14 Furthermore, I think it is important to note that
15 the free phase that was encountered at the MW-14 well was
16 unexpected, it is a concern, and this is the kind of
17 information that's going to be directing what we do at the
18 site, and we're going to be continuing to work with the
19 Environmental Bureau and following this until we get the
20 matter under control.

21 So that's where we stand in regard to current
22 activity at this well location.

23 We also are prepared to address the application
24 to reopen this case, if you would like to do it. Our
25 position basically is that the only issue that is properly

1 before you is whether or not PNM should be excused from
2 investigation and remediation as of March of 1998, and that
3 as we go forward and try and address and get our hands
4 around this and clean this problem up, the issue still
5 stands whether or not at a time when they have excavated
6 the pit to about 12 feet and then left contaminated soils
7 below that depth, should they be excused from sharing the
8 costs directly incurred in trying to remediate the site.

9 CHAIRMAN WROTENBERY: Mr. Carroll?

10 MR. CARROLL: May it please the Commission, the
11 Division has prepared a little summary of the activities
12 that have occurred in the last three months. We haven't
13 marked it as an exhibit, I realize you're not taking
14 evidence. If you would like a copy of it, I can pass it
15 out.

16 CHAIRMAN WROTENBERY: Why don't you just recap it
17 for us?

18 MR. CARROLL: Okay. Well, the parties have
19 pretty much told you what has occurred. On September 8th
20 there was an on-site meeting between the OCD and PNM and
21 Burlington for the OCD to give both parties direction on
22 additional site-investigation actions.

23 The OCD required Burlington to install three
24 additional groundwater monitoring wells upgradient to PNM's
25 site. The OCD required both PNM and Burlington to install

1 two additional groundwater monitor wells to determine the
2 lateral extent of contamination downgradient of the wellpad
3 and required that both parties provide a report by the end
4 of October.

5 On October 28th, Burlington submitted their
6 report, and I believe you have a copy of that.

7 On October 29th, PNM also submitted a report, and
8 I believe you have a copy of that.

9 And on November 2nd Burlington submitted a
10 supplemental report to their October 28th report.

11 The OCD's plan of action now is to review the
12 reports and require additional remedial actions by the
13 middle of September. This site is not --

14 CHAIRMAN WROTENBERY: The middle of September?

15 MR. CARROLL: December. Did I say September?

16 CHAIRMAN WROTENBERY: I don't know, I may have
17 mis-heard you.

18 COMMISSIONER LEE: September.

19 MR. CARROLL: By the middle of December. The
20 site is not a high-priority site for the Environmental
21 Bureau. No immediate threat to the public health exists
22 here. Actions are being taken by one or both of the
23 responsible parties, and the Environmental Bureau is
24 processing this case in its normal course of business.

25 And that's where it is in the OCD's mind right

1 now. Thanks.

2 CHAIRMAN WROTENBERY: Thank you.

3 Commissioners, before we start deliberating on
4 this particular matter, we do have a pending motion from
5 PNM to reopen the record to take some additional evidence
6 on the recent monitoring activities, and would you like to
7 hear argument on that particular motion?

8 COMMISSIONER BAILEY: Yes.

9 COMMISSIONER LEE: (Nods)

10 CHAIRMAN WROTENBERY: If you would, Mr. Alvidrez,
11 go ahead and present that motion.

12 MR. ALVIDREZ: May it please the Commission, I
13 think what might be helpful as well, perhaps, is if I
14 provided you with a copy of PNM's report, which has the
15 maps and is illustrative of where the free product was
16 encountered.

17 CHAIRMAN WROTENBERY: I guess just for the
18 record, I should clarify that we'll hold these for purposes
19 of the general record of the hearing, but these are not in
20 evidence at this point.

21 MR. ALVIDREZ: If it please the Commission, PNM
22 appealed the determination by the Division of March 13th,
23 1998, on a variety of grounds, and I think it's simplistic
24 to state that the sole issue in this case is simply whether
25 PNM is a responsible party or not.

1 PNM appealed based on a couple of grounds. One
2 is that what the Division had ordered under the
3 circumstances was simply patently unreasonable from a
4 technical standpoint because of the way this particular
5 wellpad was configured, and there was no practical way for
6 PNM to continue performing remediation in perpetuity out
7 there unless something was done to address Burlington's
8 areas of activity. And we're now just seeing the very
9 beginnings of activities on Burlington's site to anywhere
10 approaching the same level of activity that took place in
11 the area of PNM's former pit.

12 What we have asked the Commission to do is draw
13 the conclusion, make the finding, that the free product
14 that underlies this site and that is contributing to the
15 dissolved phase, which is clearly going off the site, is a
16 result of activities by Burlington. And the new evidence
17 certainly corroborates PNM's position with regard to this
18 matter.

19 Much of the testimony centered around the fact
20 that you had a large layer of free product under PNM's
21 former pit. We heard expert testimony from Burlington's
22 witnesses, we heard the Division's witness saying, Well,
23 this is a clear indication that that's the source of free
24 product.

25 And they relied on the fact that they weren't

1 seeing a similar phenomenon on Burlington's area of their
2 operations, and they pointed to the open excavation that
3 they have that didn't have the free product floating in it.

4 PNM has submitted along, and we disagree with
5 Burlington's assertion in its report that the free-phase
6 product under its site was unexpected. Indeed, PNM
7 predicted at the hearing in August and the one that
8 preceded that, that there was going to be a lot of free
9 product under Burlington's operations, that TPW-7 and TPW-6
10 that were placed in this area were not left in long enough
11 to equilibrate and allow the free product to be discovered.
12 When you put in the monitoring well and left it in a
13 sufficient amount of time, you see a significant amount of
14 free product.

15 Indeed, it may be that the free-product thickness
16 is even thicker than that, because the sampling that was
17 done was relatively recent after the well was installed,
18 and we've seen situations where the free-product thickness
19 has increased over time. So indeed, MW-14, the two feet of
20 product that we see under there may really be just the
21 beginnings of the layer of free product that we've seen
22 under there.

23 But we think this is highly relevant to the issue
24 of whether PNM's small pit could have been the source for
25 all this contamination that we've seen at the site.

1 Again, we also think it's telling that
2 Burlington's former unlined dehydrator pit came up clean
3 when you put in the monitoring well in that area. I mean,
4 at least there wasn't free product. This is exactly the
5 type of situation that you would have expected to find with
6 regard to PNM's pit.

7 You've got to sit back and wonder, why is it that
8 the separator that was being discharged and operated by
9 Burlington into an unlined pit didn't show massive amounts
10 of free product when the dehydrator, which is only taking
11 things off of that separator, is being blamed as the source
12 for massive amounts of free product in PNM's dehydration
13 pit.

14 We think that the evidence, as I said before, is
15 clearly indicating that there is a significant potential
16 source in that southeastern corner of the wellpad. And the
17 report that we submitted basically shows -- It's a Xerox
18 copy, but it shows the area of MW-14, which is in the far
19 southeastern portion. It shows the area of PNM's pit,
20 which is far, far upgradient from where we're seeing this
21 newly encountered free product.

22 And this evidence, the evidence that we would
23 seek to put before the Commission is again highly relevant
24 to whether PNM's pit is the source of the free product.

25 In addition, we've asked the Commission that if

1 it finds that PNM somehow contributed to free product, that
2 it perform an apportionment of responsibility, because as
3 things stand now -- and this is different than when we
4 started -- PNM has been accorded, if you will, 50 percent
5 of the responsibility.

6 PNM has already recovered nearly 1100 gallons of
7 free product at the site. We think this is well over what
8 could possibly, under any reasonable scenario, have been
9 released to the groundwater, even if you assume that there
10 were amounts released to the groundwater from PNM's pit,
11 and that PNM be relieved of its further obligations.

12 Again, this new evidence is indicative of a
13 massive amount of free product underlying the site and
14 again suggests that PNM's little dehydration is not the
15 source, and certainly not a 50-percent source, of the free
16 product that we're seeing under the site.

17 For those reasons, we would like to have in the
18 record this new evidence. We think it is important, it's
19 relevant, it's compelling, to the issues that are before
20 the Commission, and it's necessary for any type of just
21 adjudication with regard to the issues that are before the
22 Commission.

23 CHAIRMAN WROTENBERY: Mr. Carr?

24 MR. CARR: When the Commission acts, it's acting
25 in a quasi-judicial context, and there are procedures and

1 processes which limit and define what you decide. And in
2 this case, since we all know that there was contamination
3 at the Hampton 4M well site, and we know that in March of
4 1998 your Environmental Bureau directed PNM to conduct some
5 additional investigation and remediation.

6 And their response was, they sought a stay, and
7 they filed an application with the Division and they asked,
8 now you, to enter an order that would reverse and nullify
9 the directive from your Environmental Bureau and enter a
10 finding that PNM is not a responsible person for purpose of
11 further investigation or remediation at the Hampton 4M
12 site.

13 As the case is before you, that is the issue.

14 And it's a very interesting thing to have a case
15 brought to you in that context. Just because we're here,
16 start every day, every time there's additional information,
17 trying to come back to let those who aren't paying for the
18 costs of the remediation come in and complain and drag
19 those -- through a hearing process, those who are out there
20 trying to clean it up.

21 If what we're going to do is, every day look at
22 the evidence again and again and again, we shouldn't be
23 here with a court reporter, we should all be out at the
24 site.

25 And the way things work around here, as I

1 understand it, is, that's what happening, that is what
2 happens when Bill Olson goes out to the site, you've got
3 someone out there trying to clean it up. That's us, that's
4 Burlington. We're paying the cost of putting the wells in.
5 And yes, we're being surprised, but we're out there trying
6 to do the job.

7 And to understand the motion to reopen this case,
8 you've got to simply put it in the historical context of
9 the proceeding before you. There is one issue, and that
10 issue is whether or not you're going to say, as of March of
11 1998, that PNM was not a responsible party. Not that they
12 did 10 percent or 90 percent.

13 The question is, they're asking to be told that
14 when they had left contamination from 12 feet down to 26
15 feet under that former pit, they can come to you and you
16 can say, It's all right, you go home. That's what the
17 issue is in this proceeding.

18 And the proceeding is progressing at a sort of
19 lumbering pace. I mean, no fault to anyone, but the fact
20 of the matter is, I think it would be a big mistake to
21 start saying that we're going to call people in over and
22 over again on collateral issues when they're out there
23 trying to clean it up, because I'll tell you what that will
24 result in. I will advise Burlington and everyone that ever
25 comes in again not to touch the site until the hearing

1 processes are finished, because it will become a target.
2 You'll be called in over and over and over again.

3 Today Mr. Alvidrez says, you know, our tiny pit
4 couldn't be the cause of all this contamination, and new
5 data will show that. That's never been an issue. That's
6 the issue *du jour*, that's the issue today.

7 The fact of the matter is, there's an issue
8 framed by the pleadings, and that's the one that's before
9 the Commission. And it isn't simplistic, because if you
10 don't take the approach that when people ask you to decide
11 something, that's what you look at, we might as well just
12 have a public meeting once a month and come in and talk
13 about it.

14 But if it involves the Hampton 4M, I would
15 suggest we need to go to the wellsite. And there has been
16 additional information and it's, in the opinion of PNM,
17 highly relevant, and they spell it out in their motion or
18 their application to reopen the case, in about 11
19 paragraph, in Paragraph 8 of their Application.

20 But if you look at that, it falls in three
21 distinct categories. In Subparagraphs A, B, F, J and L,
22 they say contamination remains, and the new data shows it,
23 and that's admitted, and we're out there trying to clean it
24 up.

25 But that doesn't have any bearing on the fact

1 that as of March of 1998, that they contributed, they were
2 a responsible party for contamination at the site.

3 The next thing they do is something they've done
4 all along, they complain about the efforts Burlington has
5 undertaken to try and address this situation. That's in
6 Paragraphs C, E, F and J. They complain about our efforts.
7 That isn't relevant to whether or not in March of 1998
8 there were a responsible party for contamination at this
9 site.

10 And then in subparagraphs G, H, I and K they call
11 for further investigation and remediation, the same things
12 they put in the letter that Ms. Gannon signed to you and
13 sent at approximately the first of the month as their
14 report. Your Environmental Bureau can consider those, we
15 will consider those. We're trying to get our hands around
16 this situation and clean it up.

17 And at the same time, on another track, there's a
18 proceeding going where PNM has asked to be completely
19 excused. And I would submit to you that the new data is
20 important because it's going to direct what we do to clean
21 this up, but it doesn't bear on the issue that was brought
22 to you by PNM. We think their motion or application,
23 whichever it is, should be denied.

24 CHAIRMAN WROTENBERY: Mr. Carroll?

25 MR. CARROLL: May it please the Commission, you

1 have all been through all this before, referred to all this
2 evidence. The OCD has looked at the reports filed, and
3 this supposedly new evidence is cumulative evidence. We
4 knew free product was coming from Burlington's site. Where
5 exactly, we did not know. This new evidence is showing
6 where exactly it's coming from.

7 Burlington has admitted that free product is
8 coming from its site, and there's evidence of that in the
9 record you've already heard, and that issue has been
10 addressed.

11 Also it came out during the hearing that
12 contamination levels were rising. There's evidence of that
13 in the record, and that was addressed at the hearing.

14 The issue is whether PNM contributed to the
15 contamination underneath its site, which contributed to the
16 downgrade in contamination, and therefore PNM is a
17 responsible party.

18 PNM makes the claim that the liability has been
19 apportioned 50-50. That is incorrect. Burlington has been
20 apportioned 100 percent of the liability upgradient of the
21 PNM site. Underneath the PNM site and downgradient of that
22 site, the liability has been apportioned 50-50.

23 Because this evidence, we don't believe, really
24 shows anything other than what you've already heard, we
25 oppose the motion to reopen.

1 If the Commission does decide to reopen, we
2 believe this motion is premature. Ongoing activities are
3 occurring at the site, and the Division doesn't believe
4 that the Commission needs to meet every month or every
5 three months to examine new evidence that is brought up
6 during the current remediation activities.

7 We would suggest that the case be deferred
8 until -- we don't know when. Maybe close of the site,
9 which may occur years down the road. There's many problems
10 in reopening the case to take additional evidence, and for
11 that reason we oppose it.

12 And if you do decide to reopen, we think that the
13 motion or the application is premature.

14 Thank you.

15 CHAIRMAN WROTENBERY: Thank you.

16 Any questions?

17 COMMISSIONER BAILEY: No.

18 CHAIRMAN WROTENBERY: I don't have any either.

19 What I'd like to do at this point, if the parties
20 don't have anything further --

21 MR. ALVIDREZ: I'd like to respond just very
22 briefly.

23 We don't anticipate coming in on a monthly basis
24 or a periodic basis asking the Commission to take
25 additional evidence or information. The fact of the matter

1 is, we're here today, you've heard what the findings have
2 been, and obviously the Commission is interested in
3 additional data, additional evidence if you will, about
4 what is going on at this site, or you wouldn't have asked
5 that additional work be done out there, you wouldn't have
6 asked us to appear before you today for purposes of an
7 update.

8 What we're really asking for, what PNM is really
9 asking for, is to allow this new evidence, allow this new
10 information into the formal record that the Commission is
11 maintaining with respect to this hearing. It is important
12 to PNM to get this information into the formal record. If
13 there is an appeal, we believe that the evidence will be
14 highly relevant, and we think we're entitled to have that
15 into the formal record. You've heard it, you're going to
16 think about it, it may direct what you ultimately decide in
17 this case, and the proper procedure is to get that formally
18 in the record before you so that there is something for an
19 appellate body to look at in the event this matter is
20 appealed. We think it's very important that we be able to
21 formally get this evidence before you.

22 CHAIRMAN WROTENBERY: Mr. Carr?

23 MR. CARR: I would just note that there are
24 procedures for getting issues before you, and if this is
25 appealed I would expect the Court to look at what the

1 parties asked you to decide and decide, based upon the
2 record made as it relates to the issue of whether or not
3 PNM should be relieved of responsibility for any cleanup
4 activity at the site.

5 I don't think courts appreciate just dumping
6 piles of additional data into a record. We're not
7 quarreling with the fact that there's new data. The data
8 is of concern to us, we're going to be meeting and we're
9 going to try and clean it up.

10 But when you get into a legal or quasi-legal
11 proceeding, issues are framed by the pleadings. And you
12 don't, then, just walk into an effort to divert the
13 attention of the hearing body away from what you've asked
14 and start having nice touchy-feely-fuzzy meetings to talk
15 about contamination. I think that's what's happening here.

16 CHAIRMAN WROTENBERY: Okay. Mr. Carroll,
17 anything else?

18 MR. CARROLL: This new evidence is important to
19 the Division. It affects how Bill Olson directs the
20 parties to conduct further remediation activities.

21 Other than that, we don't see it really affecting
22 your decision.

23 CHAIRMAN WROTENBERY: Thank you. What I'd like
24 to do at this point is entertain a motion pursuant to the
25 provisions of the New Mexico Open Meetings Act -- and I'm

1 sorry, Carol, I don't know the specific section --

2 MS. LEACH: You're doing fine --

3 CHAIRMAN WROTENBERY: -- is it okay to cite
4 the --

5 MS. LEACH: -- you're doing fine.

6 CHAIRMAN WROTENBERY: -- section generally?

7 Entertain a motion to go into closed session for
8 purposes of deliberating on the two cases that we have
9 heard today.

10 COMMISSIONER BAILEY: I so move.

11 CHAIRMAN WROTENBERY: Second?

12 COMMISSIONER LEE: Second.

13 CHAIRMAN WROTENBERY: Thank you. That's
14 unanimous, then, and so we --

15 MS. LEACH: Go ahead and make a vote.

16 CHAIRMAN WROTENBERY: All in favor say "Aye".

17 COMMISSIONER BAILEY: Aye.

18 COMMISSIONER LEE: Aye.

19 CHAIRMAN WROTENBERY: Aye. Got it? Okay, good,
20 so -- You're thrown out? I wouldn't have said it like
21 that, but...

22 (Off the record at 11:02 a.m.)

23 (The following proceedings had at 11:25 a.m.):

24 CHAIRMAN WROTENBERY: And at this point I'll
25 entertain a motion to come back into open session.

1 COMMISSIONER BAILEY: I so move.

2 COMMISSIONER LEE: Second.

3 CHAIRMAN WROTENBERY: All in favor say "Aye".

4 COMMISSIONER BAILEY: Aye.

5 COMMISSIONER LEE: Aye.

6 CHAIRMAN WROTENBERY: Aye.

7 And just let the record reflect that while we
8 were in closed session, the only things that we discussed
9 were the two cases that we heard today, Case 12,223, the
10 Application of Pogo Producing Company for approval of a
11 pilot pressure maintenance project, and then also case
12 12,033, the Application of Public Service Company of New
13 Mexico for review of the Oil Conservation Division
14 directive dated March 13th, 1998, related to remediation of
15 hydrocarbon contamination in San Juan County, New Mexico.

16 We will go ahead and discuss the Case 12,033, the
17 Application of Public Service Company of New Mexico, since
18 that seems to be the group that we still have here.

19 We did consider the two motions that we have
20 pending today, one from Public Service Company of New
21 Mexico to reopen the hearing to submit new evidence, and
22 the other being Burlington Resources Oil and Gas Company's
23 motion to dismiss the Application of Public Service Company
24 of New Mexico to reopen the *de novo* hearing to submit new
25 evidence.

1 And what we have determined that we would like to
2 do at this point is leave these motions under advisement, I
3 guess, is the terminology that's typically used here. I
4 can say that the sense of the Commission is, at this point,
5 that we have adequate information in the record that was
6 developed -- the evidentiary record, that was developed at
7 the August hearing to make our decision in this matter.

8 But we are going to review the transcript of that
9 hearing. We do now have the transcripts available. Mr.
10 Brenner, in fact, provided those a little earlier than we
11 had anticipated, so those are now available. We will be
12 reviewing the transcript and the evidence presented there.

13 And we also would like to get the written closing
14 arguments from the parties, along with draft proposed
15 orders. We had originally talked about a January 14th due
16 date for those materials from the parties. We think that
17 those continue to be good -- that continues to be a good
18 target date for the submission of those documents, and I
19 just wanted to verify that with the parties.

20 MR. CARR: That's fine.

21 CHAIRMAN WROTENBERY: Any objection to continuing
22 along that time line?

23 MR. ALVIDREZ: No objection.

24 MR. CARROLL: (Shakes head)

25 CHAIRMAN WROTENBERY: Good. Then we will expect

1 to receive -- I believe we had set a ten-page limit on the
2 written closing statement, if I remember correctly --

3 MR. ALVIDREZ: We'll have to look at the
4 transcript.

5 CHAIRMAN WROTENBERY: -- accompanied by a draft
6 proposed order.

7 MR. CARR: Cut down what we've been working on.

8 MS. LEACH: Madame Chairman?

9 CHAIRMAN WROTENBERY: Yes, was it --

10 MS. LEACH: I think you wanted to give these
11 back.

12 CHAIRMAN WROTENBERY: Yes, and we also wish to
13 return the written materials that the parties submitted to
14 us today, to avoid any confusion about whether those were a
15 part of the evidentiary record in this hearing. They are
16 not. So make these copies available, you've got that.
17 Let's see, and your copy of the Burlington.

18 I think I do believe these are materials that
19 have been provided to the Division for the most part, to
20 the Environmental Bureau. I believe that's all the copies.
21 We'll return those to you today.

22 Anything else that we need to note for the
23 record?

24 MS. LEACH: No, I think that's all the issues
25 that we talked about.

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 21st, 1999.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002